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1 JUDGE VON QUALEN: Good morning, all.

2 By the authority vested in me by the
3 Illinois Commerce Commission, I now call Docket
4 Number 15-0277. This docket was initiated by Grain
5 Belt Express Clean Line LLC which filed an
6 application seeking a Certificate for Public
7 Convenience and Necessity to construct a 600
8 kilovolt transmission line across the State of
9 Illinois.

10 May I have the appearances for the
11 record, starting in Springfield?

12 MR. MacBRIDE: Appearing on behalf of
13 the Applicant, Owen MacBride, M-a-c-B-r-i-d-e, and
14 Katherine Cisneros, C-i-s-n-e-r-o-s.

15 MR. STREICKER: David Streicker for
16 Infinity Wind Power. I'm with the law firm of
17 Polsinelli PC, 161 North Clark Street, Chicago,
18 Illinois.

19 JUDGE VON QUALEN: Is your mike on?

20 MR. STREICKER: Yeah. 161 North Clark
21 Street, Chicago, Illinois. My phone number is
22 312-873-2941.

23 MR. NEILAN: Good morning, Your Honor.
24 Paul Neilan for Intervenor Mary Ellen Zotos. My

1 address is 33 North LaSalle Street, Chicago,
2 Illinois 60602, telephone 312-580-5483.

3 MR. SHAY: Appearing for Landowners
4 Alliance of Central Illinois NFP, William Shay and
5 Jonathan Phillips, same address as yesterday.

6 MR. McNAMARA: Edward D. McNamara, Jr.
7 and Joseph H. O'Brien. We appear on behalf of
8 Intervenor Concerned Citizens and Property Owners.

9 MR. DAVIS: Chuck Davis of the law firm
10 of Brown, Hay & Stephens, for the Illinois Farm
11 Bureau, along with Laura Harmon, inside counsel.

12 MR. RIPPPIE: Good morning, Your Honor.
13 On behalf of Rockies Express Pipeline LLC, Rex
14 Encore Properties LLC, and Rex Encore Farms LLC,
15 Glenn -- two n's -- Rippie, R-i-p-p-i-e. Thank
16 you.

17 JUDGE VON QUALEN: Appearances in
18 Chicago.

19 MS. ERICSON: Good morning, Your Honor.
20 Appearing on behalf of Commission Staff, Christine
21 Ericson and John Sagone, 160 North LaSalle Street,
22 Suite C-800, Chicago, Illinois 60601.

23 JUDGE VON QUALEN: Are there any others
24 wishing to enter an appearance?

1 (No response)

2 JUDGE VON QUALEN: Let the record show

3 no response.

4 This matter comes on this morning for

5 the continuation of the evidentiary hearing.

6 Are there any preliminary matters

7 before starting with Mr. Langley?

8 Yes.

9 MR. NEILAN: Good morning, Your Honor.

10 With respect to Intervenor witness

11 Mr. Michael Severson, based on conversations I've

12 had with the other counsel, they have waived

13 cross-examination of Mr. Severson. So I would

14 submit -- I have an affidavit signed by him and I

15 can file that on e-Docket as soon as I get a scan

16 of that. In the interim, if you would like, I can

17 provide the court with a copy of that. It's MEZ

18 Exhibit 6.0, Affidavit of Michael A. Severson

19 regarding pre-filed testimony. I would move to

20 submit that testimony to the record.

21 JUDGE VON QUALEN: Are there any

22 objections to MEZ Exhibit 1.0, 1.1, 1.2, 1.3, 3.0?

23 MR. NEILAN: That's it.

24 JUDGE VON QUALEN: That's all? And 6.0

1 of Mr. Severson?

2 (No response)

3 JUDGE VON QUALEN: Hearing none, those
4 exhibits are entered into evidence.

5 (MEZ Exhibits 1.0, 1.1, 1.2, 1.3,
6 3.0, and 6.0 admitted.)

7 MR. McNAMARA: Judge, Ed McNamara. All
8 of my testimony has been filed, filed on the 14th
9 of July. All of the affidavits in support of
10 testimony were filed on July 19th. I've
11 distributed a list of all of the exhibits I believe
12 to everyone. If anyone needs a copy of the list,
13 I've got an extra copy here.

14 JUDGE VON QUALEN: Would you like to go
15 ahead and move your exhibits into evidence?

16 MR. McNAMARA: Yes, Judge.

17 With regard to Concerned Citizens and
18 Property Owners, I would move at this time to
19 introduce into evidence Intervenor Exhibits CCPO
20 Exhibit 1 through 7, consisting of the testimony of
21 my clients in this matter, and Intervenor CCPO
22 Exhibits 8 through 14 consisting of the affidavits
23 of the various testifying witnesses. I'd ask that
24 both the testimony and the affidavits supporting

1 the testimony be admitted into evidence at this
2 time.

3 JUDGE VON QUALEN: Are there any
4 objections to the testimony and affidavits of
5 Joseph Gleespen, Sheryl Slightom, Ervil Wayne
6 Fisher, Jr., Kendall Cole, Michael Buchanan,
7 Natalie Locke, or Don Hennings?

8 (No response)

9 JUDGE VON QUALEN: Hearing none,
10 Exhibits CCPO 1.0, 1.1, 1.2, 2.0, 3.0, 4.0, 5.0,
11 5.1, 6.0, 6.1, 7.0, 8.0, 9.0, 10.0, 11.0, 12.0,
12 13.0, and 14.0 are entered into evidence.

13 (CCPO Exhibits 1.0, 1.1, 1.2, 2.0,
14 3.0, 4.0, 5.0, 5.1, 6.0, 6.1, 7.0,
15 8.0, 9.0, 10.0, 11.0, 12.0, 13.0,
16 and 14.0 admitted.)

17 MR. McNAMARA: Thank you.

18 JUDGE VON QUALEN: Anything else before
19 we begin with Mr. Langley's -- or, continue with
20 Mr. Langley's cross-examination?

21 (No response)

22 JUDGE VON QUALEN: Mr. Langley, you're
23 still under oath.

24 THE WITNESS: Yes.

1 MR. SHAY: Thank you, Your Honor.

2 MATT LANGLEY,

3 of lawful age, produced, sworn, and examined on
4 behalf of Infinity Wind Power, testifies and says:

5 CROSS-EXAMINATION

6 QUESTIONS BY MR. SHAY:

7 Q. Good morning, Mr. Langley.

8 A. Good morning.

9 Q. Bill Shay again for Landowners
10 Alliance.

11 I think we left off yesterday with some
12 answers to my questions concerning how Infinity
13 would raise capital to finance the development of a
14 wind farm. Do you recall that?

15 A. I do.

16 Q. I've got a few more questions about
17 that, but as a way to put it into context, I
18 thought it might be helpful for me to try to recap
19 what I think your last few answers were to some
20 questions. And so I'd like to do that. And if you
21 need to correct me at all or complete anything I
22 leave out, just feel free to do so, sir.

23 A. Okay.

24 Q. I believe what you testified to was

1 that in order to develop a wind farm which could
2 cost in the hundreds of millions of dollars,
3 Infinity would need to raise most of the capital
4 from outsiders. And you described a financing
5 structure which featured first what you called
6 institution equity or sponsor equity of about 30
7 percent of the cost and then tax equity consisting
8 of about 70 percent. And that to achieve this kind
9 of financing for the project Infinity would first
10 need to have offtake agreements or power purchase
11 agreements in place by which the electricity the
12 wind farm would generate is sold. And those
13 offtake contracts would together need to account
14 for as much of the electric capacity of the wind
15 project as possible but you said I believe at least
16 80 percent in most cases. And I think you also
17 said that these contracts would need to be
18 long-term with high creditworthy offtakers and you
19 gave as an example of such an offtaker Commonwealth
20 Edison Company. Is that essentially correct?

21 A. Yep.

22 Q. Okay. My next question would be as to
23 the length of the term of the offtake contracts,
24 about how many years would the contracts require

1 Infinity to deliver and sell the electricity and
2 the purchaser to buy it from the wind project?

3 A. A lot of it depends on the type of
4 customer. When we look at regulated utilities such
5 as ComEd or Ameren or any of the regulated, they
6 like to buy in somewhere between 15 and 25. And as
7 our power prices have gotten lower and lower and
8 more and more competitive, they tend to prefer a
9 much longer term. Obviously, if you're a utility,
10 it makes perfect sense. You get to buy very cheap
11 power for 25 years and the price never changes.
12 That's a pretty good deal.

13 When you look at the industrials,
14 people like Google and Wal-Mart, who are also in
15 this business and we sell power to, they prefer ten
16 to twelve-year terms.

17 And then the third group, which are the
18 financial players, the Morgan Stanleys, Bank of
19 America types of the world, they tend to be in the
20 ten to twelve-year range as well.

21 Q. Okay. Would you categorize the last
22 category of purchasers as power marketers that are
23 affiliates of these financial institutions?

24 A. Power marketers or hedge providers.

1 They're often referred to as hedge providers.

2 Q. Okay. Then how -- how would Infinity
3 go about establishing the price for the electricity
4 in those contracts?

5 A. We, like most of our peers, run a
6 series of financial models. We look at how much it
7 costs us to generate that electricity. We then
8 consider the profit margin that our investors are
9 going to require and solve back for a power price.
10 We then compare that to where we think the market
11 is. And sometimes we'll squeeze it down in order
12 to compete or sometimes -- you know, it's a
13 competitive market. So a lot of what we do is a
14 combination of what's the minimum return that we
15 need to make our investors want to invest in the
16 project and then what is -- what are our peers
17 offering and what do we think the price that's
18 going to win today will be.

19 Q. Okay. Is it often a fixed price for
20 the term of the contract?

21 A. It is. That's one of the major appeals
22 of wind power versus gas or coal or anything else
23 is because we don't have to pay for fuel, we can
24 give a price and stand behind it for 20 years.

1 Q. Okay. I'd ask you just to answer my
2 question yes or no if it's a yes or no question
3 rather than explaining the reasons.

4 All right. For this particular
5 project, and we're talking about Infinity possibly
6 developing wind projects in the west Kansas
7 resource area, if that were to occur and the power
8 transported by the proposed Grain Belt project,
9 what would be the delivery point to which Infinity
10 must arrange for the electricity to be delivered
11 and where the offtaker would receive it?

12 A. So the four projects that we're working
13 on for Grain Belt in western Kansas, you know, I
14 want to start by saying we have no commercial
15 contract with Clean Line yet. This is -- we have
16 no -- you know, we're still in that process. There
17 are two delivery points on the Clean Line system
18 we're looking at, one in the state of Missouri and
19 then the terminus at Sullivan. So we could deliver
20 there. Depending on what our customers want, we
21 would be also -- you know, for certain customers or
22 whatever the contractual agreements are, we could
23 deliver wherever the customer required past that
24 point and we would be willing to take that risk on

1 in certain circumstances.

2 Q. Okay. So your delivery point -- would
3 it be fair to say the main delivery points would be
4 at the converter station in Missouri or the
5 terminus at the Sullivan substation -- the AEP
6 Sullivan substation at the eastern terminus of the
7 project?

8 A. That's probably the primary one.

9 Q. Okay. Again talking about these
10 offtake contracts or purchase power agreements,
11 when would you expect that Infinity would execute
12 definitive contracts relative to the financing for
13 wind projects?

14 A. In -- it's hard to speculate about
15 Grain Belt. I mean, certainly on a calendar basis,
16 what we typically do is end up executing those
17 contracts six to eight months -- six to nine months
18 before we close financing.

19 Q. Six to nine months you say?

20 A. Yeah.

21 Q. Okay.

22 A. That's fair.

23 Q. Okay. And so what you've just
24 described is -- from going back to the end of

1 yesterday to what you just finished stating, would
2 that all constitute somewhat of a typical structure
3 in your experience for wind power projects?

4 A. Yes.

5 Q. Okay. And it's true, isn't it, that
6 Infinity would need to have the offtake contracts
7 of which you spoke and to close on the financing
8 before it could begin construction of any wind
9 project? Correct?

10 A. Correct.

11 Q. And then for the construction, of
12 course, you would need, wouldn't you, all the other
13 things in order to build wind farms in western
14 Kansas, including establishing an interconnection
15 with Grain Belt there and getting any needed local
16 transmission built in order to make that
17 interconnection and then to engage in siting,
18 design, engineering, land acquisition, and federal,
19 state, and local permitting?

20 A. No. We already have a hundred percent
21 of that land acquired and locked up. We are
22 designing our system to incorporate directly into
23 Grain Belt so that we do not need to rely on the
24 local grid. We have already obtained probably,

1 depending on how you look at it, half to two-thirds
2 of the state permitting that we need. We have
3 specifically sited the land to avoid any federal
4 permitting. So most of the development activities
5 will be complete prior to us engaging with an
6 offtaker.

7 Q. Okay. But you have to complete that
8 prior to construction beginning; correct?

9 A. Correct.

10 Q. Okay. Now, for most wind projects that
11 you're aware of in your career, do they normally
12 connect to the high voltage electric transmission
13 grid?

14 A. Most wind does, yeah.

15 Q. And how is that typically done?

16 A. We -- so outside of merchant
17 transmission projects you mean? Is that your
18 question?

19 Q. Well, yes. Because I think most of the
20 transmission is not merchant --

21 A. Right.

22 Q. -- in this country; right? Okay.

23 A. So when we decide to build a wind
24 project, one of the first things we look for is a

1 strong point of interconnecting our power. It's
2 almost as important as how hard the wind blows. We
3 go to the local utility. We fill out an
4 application, pay a deposit. They do a study. We
5 say how much energy we want to inject into the grid
6 at what point. They figure out what the impact of
7 that injection will be on their overall system, and
8 they come back to us and say it's going to cost X
9 million dollars for us to upgrade our system to
10 support your facility. We pay that. They then
11 sign what's called a generator interconnect
12 agreement that governs how the parties will work
13 with each other to build those upgrades.

14 Once those upgrades are complete, you
15 know, we're doing that in parallel with building
16 the facility. Once the upgrades are complete, we
17 commission the facility and it comes online.

18 Q. Okay. Do you typically try to locate
19 and design your wind projects such as that you can
20 minimize the distance to the local utility
21 substation interconnect point?

22 A. It's a cost-benefit analysis, so if
23 there's -- if we're on the top of the hill and the
24 wind's blowing really hard, we're willing to build

1 a longer transmission line. And if we're next to
2 the substation, we can accept lower wind because we
3 don't have to pay for those costs. So it's just a
4 cost-benefit analysis.

5 Q. Okay. For those types of
6 interconnection structures and facilities and
7 processes you just described, is it the case that
8 in most instances the transmission system to which
9 the wind project is going to connect is typically
10 in place?

11 A. Yes.

12 Q. Okay. So you typically would connect
13 to a nearby utility substation and then from there
14 the power gets into the grid?

15 A. Correct.

16 Q. Okay. But for projects that we're
17 addressing here that would not be the case;
18 correct?

19 A. Correct.

20 Q. Instead, a new \$2.2 billion plus
21 several hundred mile transmission line must be
22 built; right?

23 A. Correct.

24 Q. Okay. So it correct to say that at the

1 time Infinity would sign -- look to sign offtake
2 contracts to support its wind projects and then to
3 enter into agreements for the hundreds of millions
4 of dollars of financing and then sign a
5 transmission service agreement with Grain Belt, at
6 that time the line -- the Grain Belt line would
7 still not have been constructed?

8 A. We -- we're working with Grain Belt to
9 understand what the best schedule is. We may be
10 doing those things in parallel. We have already
11 begun conversations with various classes of
12 offtakers about this project and they have already
13 expressed an interest. Nobody obviously is signing
14 contracts yet. So we -- our goal is, of course, to
15 shorten the time between when Grain Belt is fully
16 permitted and begins construction and when we would
17 bring our projects online.

18 Q. Okay. I'm just trying to understand
19 whether the answer was yes to my question.

20 A. Did you say under construction or
21 online?

22 Q. I said all of those things that I
23 mentioned, those would occur before the line would
24 have been constructed. That was the question.

1 A. I mean, we're speculating because we
2 haven't had an opportunity to go all the way down
3 the path yet. What we have discussed with the
4 utilities is, you know, they would like to at least
5 see the line fully permitted, they would like to
6 see it fully financed, and then they could begin
7 conversation with us.

8 In terms of when we finance our project
9 versus when they finance theirs, part of what we
10 tried to do, as we mention in our testimony, is
11 there's four -- four distinct phases and we would
12 probably build those in phases. So the earlier
13 phases would probably be done prior to. So Western
14 Plains is 700 and Horse Thief is 500. The later
15 phases would probably be after operation.

16 Q. Later phases being what?

17 A. The other two projects that were
18 referenced in the testimony.

19 Q. Okay.

20 A. Iron Star and -- I'm drawing a blank.

21 Q. Okay. All right. But again, I'm just
22 trying to make sure I understand.

23 A. Sure.

24 Q. The question again was, basically three

1 things I asked, entering into offtake contracts
2 with purchasers of your electricity, entering into
3 financing agreements, the two different types of
4 equity you testified to yesterday --

5 A. Right.

6 Q. -- and then signing a transmission
7 service agreement with Grain Belt.

8 A. So if we --

9 Q. Sorry, let me complete.

10 At the time those things would be done
11 isn't it true the line would not yet be constructed
12 and in service?

13 A. That is certainly true for the
14 transmission service agreement. That is most
15 likely true and almost certainly true for the power
16 purchase agreement. Financing is the one where we
17 may do some of that in -- we would -- we may have
18 to pull the trigger on financing in parallel with
19 the line going into construction rather than prior
20 to.

21 Q. But you can't begin construction of
22 your wind project prior to financing; can you?

23 A. Right. But we can -- we can start --
24 we can begin construction prior to us having a

1 hundred percent of the financing wrapped. So we
2 can get the equity in prior to getting the tax
3 equity in and beginning construction.

4 Q. Fair enough. I think that answers it.

5 As far as this transmission service
6 agreement with Grain Belt, could you explain some
7 of the key terms, including the time period, the
8 length, the pricing, and the commitment, how firm
9 the commitment will be on Infinity's part?

10 A. We have discussed the transmission
11 service agreements with Grain Belt obviously
12 extensively. We currently do not, as I mentioned
13 earlier, have any written or binding contracts with
14 them. So what we've been talking about so far is
15 very broad commercial terms. The two that are
16 obviously most important to us are the length of
17 the contract and the price.

18 As far as the price goes, we have not
19 -- we have discussed and I think it's in the record
20 the TSR. We have offered a few different pricing
21 options to Grain Belt, but we have not begun
22 negotiating any of those. And similarly with the
23 term. So I'm not really going to tell you what
24 it's going to cost to use that line because we

1 haven't negotiated those agreements yet.

2 Q. I'm not asking you to. You said the
3 two most important factors are the length of the
4 contract and the price; right?

5 A. Correct.

6 Q. Okay. For the length of the contract
7 are we talking maybe ten years, 15 years, maybe 20
8 years?

9 A. We'd like it to be as long as possible.

10 Q. Okay.

11 A. And certainly as long as whatever the
12 commercial contract is that we have with the buyer
13 of the power.

14 Q. Right. Okay. And would you expect
15 that Infinity's commitment to use the line or at
16 least to pay for the line would endure for the
17 entire length of the contract? In other words,
18 that you couldn't terminate early --

19 A. No, I --

20 Q. That it's a firm contract?

21 A. Yeah, I would imagine it would be
22 because their financing would be based on that.

23 Q. Right, okay. Would you agree that this
24 process and sequencing you just described, because

1 the line is not yet built, is a little unusual for
2 a wind developer?

3 A. It is -- yeah, it's unusual but not
4 unheard of.

5 Q. Okay. Fair enough. All right.
6 Switching gears for a moment back to wind energy
7 development. How important is the renewal of the
8 federal production tax credit to Infinity's plans
9 to develop wind projects that would utilize the
10 Grain Belt line?

11 A. Not at all. We believe good wind
12 projects are good wind projects. We are in the
13 best parts of the country for wind. We think wind
14 is incredibly competitive with traditional forms of
15 power. So we will take advantage of the PTCs as
16 long as they are available to us, but having them
17 go away will not change -- we're not going to go
18 out of business because they go away.

19 Q. For the projects you mentioned that
20 you're working on in western Kansas that would
21 connect to the proposed line, have you made any
22 projections as to when you might start construction
23 of the first one?

24 A. We're trying to line that schedule up

1 with Grain Belt's schedule. So right now I think
2 we're looking at 2019, 2018-2019.

3 Q. All right. And then what dates does
4 Infinity expect that the Grain Belt line will be
5 completed and in commercial operation?

6 A. The last I think we talked to them was,
7 you know, 2018 or 2019. So again we're trying to
8 keep those dates lined up.

9 Q. What if you knew that the project could
10 not be operational until early 2020 at the
11 earliest?

12 A. Then right now I mean we would -- we
13 would just adjust our commercial schedule. It's
14 part of the reason why we're not signing binding
15 contracts with shippers yet or with customers until
16 the line is fully permitted and gets through these
17 processes and we can nail the timing down. We can
18 shift our work around accordingly.

19 MR. SHAY: Okay. I don't have any
20 other questions for this witness at this time.
21 Thank you, sir.

22 THE WITNESS: Thank you.

23 CROSS-EXAMINATION

24 QUESTIONS BY MR. McNAMARA:

1 Q. Good morning, Mr. Langley. My name's
2 Ed McNamara. I represent Intervenor Concerned
3 Citizens and Property Owners.

4 A. Good morning.

5 Q. First off, I want to make sure I
6 understand this financing. Your financing is based
7 upon Grain Belt being able to build the line?

8 A. Yeah, in part. Our financing -- our
9 financiers will want to make sure that Grain Belt
10 can build the line.

11 Q. And you have to have that assurance
12 before you can get your financing to build the wind
13 farms?

14 A. Yes.

15 Q. Likewise, as is my understanding from
16 the testimony to date, Grain Belt's financing is
17 dependent upon someone like you or other shippers
18 -- I'll call you shippers -- entering into
19 agreements to utilize their services?

20 A. Yes.

21 Q. Am I correct that neither Grain Belt
22 nor your company at this time have the ready cash
23 available to build either two projects that you're
24 talking about in Kansas?

1 A. Grain Belt wouldn't put cash into our
2 projects and so --

3 Q. Fair enough.

4 A. We -- we would go out and raise it at
5 an appropriate time.

6 Q. But if we were asking you to sign a
7 check today to build those projects in Kansas, you
8 wouldn't be able to do it?

9 A. Yeah, correct.

10 Q. Correct?

11 A. Correct, correct.

12 Q. And with regard to this docket I don't
13 believe you've presented any financial information
14 as to your financial ability to come forward with
15 your plan; is that correct?

16 A. Right.

17 Q. Now, it's my understanding -- you
18 correct me if I'm wrong -- you have four operating
19 wind farms at this time.

20 A. We -- we develop and build wind farms
21 and then sell them to other costs of capital. So
22 we have developed over 1300 megawatts of wind
23 farms. We don't own any of them. We look for
24 investors and the investors own them after

1 operation.

2 Q. Do you have any operating projects --
3 any wind farms that you're actually operating
4 yourself as of today's date?

5 A. No. That's not our business model. We
6 develop the projects and then sell them to other
7 people who operate them. So we take them through
8 to construction and then sell them down. So the
9 projects that we have we have sold to Exelon,
10 NextEra, EDF Renewable, SunEdison. Yeah, that's
11 it. And it's been about 1300 megawatts or so.

12 Q. So you don't own anything today and you
13 will develop future wind farms to sell them to
14 other people?

15 A. Correct.

16 Q. Well, what about these contracts you're
17 talking about where you're agreeing to sell an
18 amount of energy to certain companies that you're
19 going to utilize then to finance the construction
20 of your wind farms? Will these contracts likewise
21 be sold to the entities to which you sell the wind
22 farms?

23 A. Yes. The contracts are associated with
24 the project and that's a critical part of project

1 development. That's part of how we build value in
2 a project. So we bundle it all up into a nice
3 package and then sell it to somebody else. We're
4 taking a lot of the risk. I mean, it's a risk
5 allocation. The pension funds aren't going to take
6 the kinds of risks that we have to take to build
7 wind farms. We take the risks, put it all
8 together, and then sell it down to somebody who
9 wants nice, predictable, stable cash flows.

10 Q. Infinity Wind Power -- you've been with
11 the company how long?

12 A. Since 2012.

13 Q. And how long has the company been in
14 existence?

15 A. Since 2008.

16 Q. And how many projects have you brought
17 to fruition as of today's date?

18 A. I have to count them up. Seven that
19 are either operating or under construction right
20 now and three that will go into construction
21 hopefully this year, early next year.

22 Q. Now, you mentioned seven that either
23 are operating or are under construction.

24 A. Uh-huh.

1 Q. Of those seven, are four of those seven
2 operating?

3 A. Yes.

4 Q. Yes?

5 A. Yes.

6 Q. Okay. Then am I correct -- now, where
7 are the other three projects that you're working on
8 now and not operating?

9 A. They're under construction. So two are
10 in North Dakota and one is in New Mexico.

11 Q. Which one in New Mexico are you working
12 on at this time?

13 A. We are not working -- I mean, it's
14 under construction, so we've already sold it to the
15 long-term owner. But it's the Roosevelt project.
16 It is now owned by EDF, which is a large, worldwide
17 conglomerate. And it's in -- it's under
18 construction. It's about halfway done.

19 Q. So you actually sell the wind farms and
20 whatever contracts you can bundle with the wind
21 farms before they go into operation?

22 A. In some cases. We have taken one
23 through to the point of operation.

24 Q. Which one is that, sir?

1 A. Shooting Star.

2 Q. That's in Kansas?

3 A. Correct.

4 Q. With regard to Kansas, it's my

5 understanding that you have four projects that you

6 might develop if in fact you can get contracts with

7 shippers.

8 A. With respect to this docket, yes. We

9 have a lot more than that going on in Kansas, but

10 with respect to what we're talking about here, yes.

11 Q. There are four projects?

12 A. There are four projects.

13 Q. And you can get contracts with shippers

14 if Applicant in this case can get financing to

15 build the line?

16 A. Correct.

17 Q. And Applicants in this case can get

18 financing to build the line if you can get

19 contracts?

20 A. That's why we work so closely together;

21 correct.

22 Q. Okay. Have you studied the financing

23 of the Clean Line companies?

24 A. No.

1 Q. You've not done any due diligence as
2 far as having Clean Line Energy Partners furnish
3 you balance sheets, projected income statements,
4 anything of that nature?

5 A. We understand the economics of what
6 they're doing. I wouldn't classify it as studying.
7 We certainly haven't asked them for audited
8 financials or anything like that. It's not -- we
9 know where they are in their fundraising process
10 and how they're trying to roll this out. We talk
11 to them almost on a weekly basis. But as far as,
12 you know, looking at audited financials or anything
13 like that, it's -- we have not done that yet. It's
14 not -- it's not the right time to do that.

15 Q. When will be the right time?

16 A. When they have the line fully permitted
17 and are ready to construct. Because that is when
18 we'll go out and start trying to get our financing
19 and we will use the information they provide us to
20 help us get our financing.

21 Q. Are you aware of the current partners
22 in Clean Line Energy Partners LLC?

23 A. Some, but probably not all.

24 Q. Are you aware of any recent capital

1 calls by Clean Line Energy Partners LLC?

2 A. I am aware that they recently raised
3 funding, but I do not actually know who -- from
4 whom they received that funding.

5 Q. Do you know how much the funding was?

6 A. Not off the top of my head. We talked
7 about it, but I can't remember it.

8 Q. You currently are working on a project
9 in Iowa?

10 A. We have a project in our portfolio in
11 Iowa.

12 Q. Are you doing anything with it to bring
13 it online at this time?

14 A. Not right now.

15 Q. In addition to the two projects you
16 mentioned in Kansas, I believe you mentioned Horse
17 Thief; is that correct? Is that the correct name?

18 A. Yeah.

19 Q. Horse Thief. And the other one is
20 Western Plains; is that right?

21 A. Western Plains, yes. Iron Star.

22 Q. Okay. Are those the two projects that
23 if both of you can get financing that you will get
24 together and utilize?

1 A. Western Plains would be the first one.
2 It's closest to where Clean Line plans to put their
3 converter station. Horse Thief would be the one
4 after that, then probably Iron Star after that.

5 Q. What about Santa Fe?

6 A. Santa Fe probably would come right
7 around the same time as Iron Star based on where it
8 is.

9 Q. Are you currently -- well, strike that.
10 In Kansas now you are not operating any wind farms?

11 A. No. We have developed several, sold
12 one to a utility and one to Exelon, and they are
13 operating those wind farms.

14 Q. Did you operate either one of those
15 before they went online?

16 A. We managed the construction for the
17 Shooting Star project prior to coming online.

18 Q. But neither one of which you actually
19 started producing energy and selling energy?

20 A. No. The way the tax rules work is we
21 have to transfer it to the owner before declaring
22 COD or we have tax issues, so typically --

23 Q. Are both of those projects operating?

24 A. Yes.

1 Q. Are you aware of how they're getting
2 their energy to markets?

3 A. Yes.

4 Q. And that's occurring as we sit here
5 today; is that correct?

6 A. Correct.

7 Q. In Minnesota, do you have a project
8 under development in Minnesota?

9 A. We had a project under development that
10 we sold to EDF.

11 Q. Did you build that project?

12 A. No. This was an early-stage
13 transaction, earlier than we typically do.

14 Q. By early stage are you meaning it was
15 all paperwork? You didn't actually enter into
16 contracts to build the wind farm?

17 A. We -- no, that's not true. We had
18 land. We had rights to interconnect with a
19 facility. We had several of the permits, although
20 not all of them. We did not have the commercial
21 contract for the person to buy the power. EDF
22 brought that.

23 Q. You were just in on the very initial
24 stages of that?

1 A. We had been working on it for four
2 years. I wouldn't say it's initial stages. We
3 invested a significant amount of money into it.

4 Q. In Nebraska you have two projects that
5 you're working on?

6 A. Two that we're working on and two that
7 we've sold.

8 Q. One of the projects you're working on
9 is Cottonwood?

10 A. Correct.

11 Q. Where are you in that development?

12 A. We have partnered with NextEra Energy
13 Resources, who's the largest owner of wind in the
14 country. We brought the project, it was fully
15 construction ready, and they are bringing the
16 contracts to buy the power.

17 Q. Okay. So in that one actually it's a
18 little different than what you're envisioning here
19 is you didn't have the contracts in place to build
20 the wind farm?

21 A. In that case, yes.

22 Q. So in that case you found someone to
23 buy the wind farm and then they came in with the
24 contracts to make it all work?

1 A. Right, because of an existing
2 relationship they had with the seller -- or, the
3 buyer. Sorry.

4 Q. By the buyer, do you mean the purchaser
5 of the energy?

6 A. The purchaser of the energy, correct.

7 Q. Okay. And you've got a Cottonwood II
8 in Nebraska?

9 A. Correct.

10 Q. Where is that in development?

11 A. It's in mid -- we call it mid-stage
12 project. So we do not have a purchaser for the
13 power. We're developing that project. We're
14 actively developing that project.

15 Q. By actively developing it, are you
16 constructing the wind farm?

17 A. No. We're acquiring the land. We're
18 working with the landowners. We're doing the
19 permitting work, doing the environmental steps.
20 You know, we've planned that project to come online
21 probably sometime in the middle of 2017. That's
22 our -- that's been our plan.

23 Q. Have you -- you've not entered in any
24 agreements with the purchaser of the energy for

1 that wind farm?

2 A. Correct. We're not at that stage of
3 development yet.

4 Q. Have you entered into any commitments
5 as to who you will interconnect with?

6 A. Yes.

7 Q. And who will that be?

8 A. NPPD.

9 COURT REPORTER: I'm sorry?

10 A. NPPD, Nebraska Public Power District.

11 Q. And is that a DC line?

12 A. No.

13 Q. With regard to North Dakota and the two
14 projects there, where are you in development, first
15 off, on Antelope Hills?

16 A. We've sold both of those projects. We
17 obtained the commercial contract from the utility,
18 in this case Basin Electric Cooperative, one of the
19 largest cooperatives in the country. We negotiated
20 and financed those agreements. We fully permitted,
21 fully acquired all of the lands, completed all of
22 the studies, and then sold the project to
23 SunEdison, who's now the single largest renewable
24 energy company in the world. They are building the

1 project and they will have that project online
2 prior to the end of 2016.

3 Q. With regard to that particular project,
4 does that interconnect with a DC line?

5 A. No, it does not. Neither of them do.

6 Q. With regard to the three projects -- do
7 you have three projects in Oklahoma?

8 A. We have six projects in Oklahoma.

9 Q. Okay.

10 A. Five or six.

11 Q. Okay. I'm looking at first Armadillo
12 Flats?

13 A. Armadillo Flats?

14 Q. Yes, sir.

15 A. Yep.

16 Q. Tell me about that.

17 A. That is a mid-stage project. So we are
18 planning that project for a 2017 online date
19 probably.

20 Q. Do you still own that project?

21 A. Oh, yes.

22 Q. Are you constructing that project?

23 A. Not yet.

24 Q. Have you obtained the necessary

1 financing to construct that project?

2 A. It's not at that stage of development.
3 We're not planning on it until 2017. So we will
4 start construction twelve months prior to an online
5 date and we will get financing six months prior to
6 that. So we're not planning to finance it until
7 the beginning of next year.

8 Q. Do you have any agreements in place to
9 sell any of the energy from that project?

10 A. We're in discussions but nothing has
11 been executed yet.

12 Q. Do you have any agreements in place
13 with a transmission line or utility?

14 A. Yes.

15 Q. And with whom?

16 A. OG&E, Oklahoma Gas & Electric.

17 Q. Is that a DC line or not?

18 A. AC.

19 Q. What about Mammoth Plains Number II,
20 what's the stage of that?

21 A. It's similar to Armadillo Flats almost.
22 Yeah. Planned for 2017. The interconnect
23 agreement is with Western Farmers Electric
24 Cooperative. We have been talking to several

1 people about commercial arrangements, but it's not
2 in our plan to execute those for another few
3 months.

4 Q. And likewise would that be with an AC
5 line?

6 A. Yes.

7 Q. I see Willow Creek in Oklahoma.

8 A. That's a very -- that's an early stage
9 project.

10 Q. Do you have any agreements with any
11 transmission lines?

12 A. We are in the first of three stages to
13 get that agreement. There's a prescriptive process
14 that you have to go through. We're in that process
15 but we don't have the agreement yet.

16 Q. The proposed transmission lines, are
17 they AC?

18 A. Yes.

19 Q. Do you have any customers lined up for
20 Oklahoma?

21 A. It's much too early. No, not yet.

22 Q. Okay. And you've got three other
23 projects in Oklahoma?

24 A. Yeah. They're very early stages.

1 They're even earlier than Willow Creek.

2 And we have Mammoth Plains I, which is
3 a project that we developed and sold to NextEra.
4 It has a PPA with Southwestern Public Services,
5 which is a subsidiary of Xcel Energy, and went
6 online last year.

7 Q. And that's out of your portfolio; am I
8 correct?

9 A. Yeah, we sold that one.

10 Q. In Texas you've got three projects
11 going?

12 A. Yes. Yes.

13 Q. One of them would be Buckthorn?

14 A. Yep.

15 Q. Where are you there?

16 A. That has a commercial purchase
17 agreement with LCRA, the Lower Colorado River
18 Authority. That will go online by the end of 2016.
19 We are signing binding contracts in the next few
20 weeks for the purchase of all the major equipment
21 and are in the process of financing.

22 Q. Is this one that you're going to build
23 at this time or can you tell me now?

24 A. I can't -- we are not -- I'm not in a

1 position to tell you right now.

2 Q. You could sell it or you could build
3 it?

4 A. We could do either one right now.

5 Q. Okay. You're going to interconnect
6 there at Buckthorn with what type of a line?

7 A. AC.

8 Q. Live Oak, what stage of development is
9 that in?

10 A. That is a project that's targeted for
11 20 -- a mid 2017 TOD, 6/1/2017. So we have -- it
12 is fully permitted. It has a hundred percent of
13 the land necessary to build the facilities. We
14 have an interconnect agreement with American
15 Electric Power, AEP, on a 345 kV AC line. And we
16 are working with several financial institutions to
17 buy the power from us.

18 Q. With regard to that particular project,
19 what type of a line are we talking about?

20 A. AC.

21 Q. River Birch also in Texas, where are
22 you with that?

23 A. We declined -- we abandoned that
24 project.

1 Q. Why?

2 A. We didn't -- the commercial -- we

3 didn't like where it sat. The commercial prospects

4 for it weren't very good so we didn't want to

5 continue to invest in it.

6 Q. Did you buy that project from someone

7 else?

8 A. No, we greenfielded it.

9 Q. And you've got a number of other

10 projects that we've not spoken of?

11 A. Correct.

12 Q. Am I correct that the projects that we

13 did speak about this morning that are under

14 development or that have been sold, have they all

15 connected to AC lines?

16 A. To date, yes.

17 Q. Okay. Are you familiar with the length

18 of this line?

19 A. Yes.

20 Q. And what is it?

21 A. The precise -- 790 miles I think.

22 Q. Subject to check, would you say 702

23 miles?

24 A. Thank you.

1 Q. Okay.

2 A. 702.

3 Q. Okay. Would this be the first project
4 to which you've connected with a DC line?

5 A. Yes.

6 Q. And the two projects that you sold off
7 in Kansas, when you sold those, you had contracts
8 in place for AC lines; is that correct?

9 A. Yes.

10 Q. Do you have your testimony in front of
11 you there, sir?

12 A. I do.

13 Q. First off, I'd like to direct your
14 testimony to pages 4 -- page 4, lines 20 through 22
15 and page 5, lines 1 and 2.

16 A. Okay.

17 Q. Am I correct, based upon your past
18 testimony, that wind farms are developed, financed,
19 put online in Kansas where in fact they're
20 connected to AC lines?

21 A. Correct.

22 Q. Okay. You state at the bottom of page
23 4, line 22, that it's difficult to obtain financing
24 to construct a wind farm due to the inefficient

1 design of the grid and it's lack of modernization.

2 A. I think I was referring specifically to
3 wind farms where the power is designed to be
4 exported out of the area in which it's
5 interconnecting. But yes.

6 Q. So am I correct that your business
7 model to date would be wind farms that are located
8 at least less than 702 miles from where you're
9 delivering the energy?

10 A. I'm trying to think. That's generally
11 true.

12 Q. Well, let's get to the specifics. Have
13 you been able to sell any wind farms to date where
14 the energy is transported more than 702 miles?

15 A. I'm trying to remember the length of
16 the state of Texas. We have developed a wind farm
17 that has moved power from the western side of the
18 state to the eastern side of the state. So subject
19 to that being less than 702 miles, yes.

20 Q. In general, you've developed and sold
21 and made money on wind farms that are a lesser
22 distance, put it that way?

23 A. In general, yes.

24 Q. And Texas you're not real sure of;

1 right? Are you -- are there any others that say
2 would go more than 500 miles?

3 A. Not in -- not in Infinity's portfolio.

4 Q. Subject to check, would you agree that
5 in Texas you're transporting -- or, before you sold
6 it off, the plan was to transport the energy 790
7 miles on an AC line?

8 A. That's the width of Texas?

9 Q. That's what I've been told.

10 A. I don't want to speculate too far into
11 this because it's a little more complicated than
12 that.

13 Q. I'm going to refer your attention to
14 page 4 of your testimony. I'm going to refer your
15 attention more specifically to lines 12 through 14.

16 A. Okay.

17 Q. And on line 13 you use the phrase
18 "least-cost way."

19 A. Yep.

20 Q. Are you familiar with past precedent of
21 this Commission as to how the Commission determines
22 the least-cost means to develop a line?

23 A. No, I am not, not this Commission.

24 Q. Am I correct that when you're talking

1 about least-cost way you're simply referring to a
2 line that will supply the energy with less loss of
3 energy?

4 A. Least-cost the way that I used it here
5 and the way that we think about it as developers is
6 the amount in excess of what it costs to generate
7 in Kansas that we will -- the adder, if you will,
8 to move -- that it will cost to move the power from
9 where we are in Kansas to where the buyer is. So
10 those costs do include losses. They include the --
11 whatever monetary arrangement we come up with with
12 Clean Line in terms of a transmission service
13 request and the perceived risk of the overall
14 project. Because as projects get more risky, we
15 have to add more money because our investors will
16 require a higher return commensurate with that
17 return. So cost is really three different things.
18 It's cost of money, cost of power, and amount of
19 power delivered.

20 Q. So basically your least-cost analysis
21 relates to the developers of the wind farm and the
22 merchant transmission line?

23 A. Yes.

24 Q. In Illinois we have a little different

1 system of determining least-cost means. It's a
2 twelve-point system that's generally designed to
3 give at least some protection to the landowners
4 here in Illinois. You've not made yourself aware
5 of that?

6 A. I'm broadly aware of the criterion that
7 this Commission uses when making a determination to
8 provide the CPCN. Mostly that has been in support
9 of the preparation of my testimony and also from a
10 commercial perspective understanding the risks and
11 strategy that Clean Line's employing to get this
12 line permitted. But I haven't read the code, if
13 that's what you're asking.

14 Q. By reading the code, you mean the
15 Illinois statutes by which the applicants are
16 attempting to apply in this case?

17 A. Correct. I have read the portions
18 relating to -- you know, pieces of it that are
19 important but I have not read it cover to cover.

20 Q. What did you read?

21 A. The list that was contained in the
22 requirements of the three points and -- the three
23 commercial points and the twelve siting or -- you
24 know, the criterion that the Commission was

1 applying when looking at whether or not to grant
2 the CPCN.

3 Q. And part of that criteria is whether
4 this particular line -- how it affects the
5 residents of the State of Illinois; is that not
6 correct?

7 A. That is my understanding, correct.

8 Q. Did you dig into it any further? Did
9 you determine what we look at here in Illinois as
10 to whether the line will be built, whether it's the
11 least-cost means to solve the problem?

12 A. Most of what I focused on were the
13 economic criteria rather than the siting criteria.

14 Q. Would it surprise you to learn that we
15 actually have twelve points that must be addressed
16 to arrive at a least-cost means?

17 A. No.

18 Q. But just -- I don't want to belabor
19 this point, but your least-cost way is simply
20 relating to the cost of building and delivering the
21 product?

22 A. Correct.

23 Q. Thank you. And in getting back to your
24 prior testimony, you do not have any contracts in

1 place at this time with anyone as to how much it's
2 going to cost to transport the energy from your
3 proposed wind farms in Kansas to your proposed
4 customers?

5 A. Are you saying the shipping contracts?

6 Q. Yes, sir. I'm sorry.

7 A. No, we do not have -- we do not have
8 those contracts in place.

9 Q. And am I correct that you've not
10 negotiated or attempted to negotiate interconnect
11 contracts with anyone else that might have lines
12 available to transport your energy?

13 A. In our -- it is our view that those
14 people don't exist.

15 Q. Well, you have two projects there in
16 Oklahoma where you've sold them and they're selling
17 the energy; correct?

18 A. Correct. But neither of those two
19 projects are selling energy to PJM.

20 Q. Okay. Have you done a study as to the
21 lines that might be available to allow you to
22 connect to PJM?

23 A. We -- we are -- we think we are aware
24 of the majority of the merchant transmission

1 projects that are being planned in the United
2 States, yes.

3 Q. Okay. There's other ways to transmit
4 other than merchant transmission lines?

5 A. That is correct. And as I said, my
6 testimony of those ways are not ideal.

7 Q. Not ideal but have you made any attempt
8 to negotiate those types of contracts?

9 A. Yes. We had a long-term -- long-term
10 transmission service agreement in Kansas to move
11 the power from Kansas to PJM and terminated that
12 contract two years ago.

13 Q. And you built into that contract, I
14 take it, an escape clause so you could get out of
15 it?

16 A. It is a standard form part of the SPP
17 tariff that those termination clauses are built in.

18 Q. What I'm trying to develop here is if
19 this line doesn't go into operation there are other
20 sources that are possible to transport the energy
21 from Kansas to other points and places, including
22 the PJM and other potential points?

23 A. In theory that's true. What we have --

24 Q. That's all I want to know.

1 A. Okay.

2 Q. I believe you presented some testimony
3 that part of the energy that you would sell would
4 be taken off at a converter station in Missouri?

5 A. It could be.

6 Q. Could be. And then part of it would be
7 taken off at a point in eastern Indiana?

8 A. Correct. Those are the two points,
9 yeah.

10 Q. Excuse me. Western Indiana.

11 A. Right. Yeah. Sorry. I didn't catch
12 that.

13 Q. But as of today's date you do not have
14 any customers for any of that energy at either
15 point?

16 A. Correct.

17 Q. And am I correct that likewise with
18 regard to the two projects that might go forward in
19 Kansas that when the energy in fact starts to move
20 it is more likely than not that you won't be the
21 shipper?

22 A. That is -- given the size of these,
23 that is correct and our current business model.

24 Q. That's your business model?

1 A. Right.

2 Q. You develop these things until you can
3 best make a profit, sometimes it's prior to
4 construction, sometimes it's a finished product,
5 but your business model is such that you're never
6 actually the shipper once it's up and running?

7 A. Our current business model is, yes.

8 MR. McNAMARA: I think that's all I
9 have. Thank you, sir.

10 THE WITNESS: Thank you.

11 JUDGE VON QUALEN: I believe that
12 completes the cross for this gentleman.

13 Any redirect?

14 MR. STREICKER: Yes, one quick question
15 on redirect, Your Honor.

16 REDIRECT EXAMINATION

17 QUESTIONS BY MR. STREICKER:

18 Q. Mr. Langley, in response to one of
19 Mr. Shay's questions you mentioned TSR; correct?

20 A. Correct.

21 Q. Does that stand for transmission
22 service request?

23 A. It does.

24 Q. Were you referring to Clean Line's 2015

1 transmission service request?

2 A. I was.

3 Q. And the four projects that you've
4 talked about today that would be designed to export
5 power using the Grain Belt Express line, were those
6 four projects listed in today's response to that
7 transmission service request?

8 A. They were.

9 MR. STREICKER: Thank you. I have no
10 further questions.

11 JUDGE VON QALEN: Is there any
12 recross?

13 MR. SHAY: Just a little, Your Honor.

14 RECROSS-EXAMINATION

15 QUESTIONS BY MR. SHAY:

16 Q. Mr. Langley, if I recall -- well, I'll
17 just ask you. Those transmission service requests
18 that your counsel just asked you about, those
19 aren't -- by virtue of completing and submitting
20 those, Infinity has not made any legal commitment
21 to enter into any transmission service agreement
22 with Grain Belt; has it?

23 A. Correct.

24 MR. SHAY: Thank you.

1 MR. McNAMARA: I have nothing further,
2 Judge.
3 MR. STREICKER: Nothing further, Your
4 Honor.
5 JUDGE VON QUALEN: Are there any
6 objections to Infinity Exhibit 1.0?
7 MR. SHAY: Your Honor, I was going to
8 object to the moonshot reference, but I decided not
9 to.
10 JUDGE VON QUALEN: Okay. Then Infinity
11 Exhibit 1.0 is admitted into evidence.
12 (Infinity Exhibit 1.0 admitted.)
13 JUDGE VON QUALEN: Thank you, Mr.
14 Langley.
15 THE WITNESS: Thank you.
16 (Witness excused)
17 JUDGE VON QUALEN: Let's take a break
18 and go off the record for ten minutes.
19 (A recess was taken from
20 10:07 a.m. until 10:20 a.m.)
21 JUDGE VON QUALEN: Back on the record.
22 Is Mr. Berry the next witness this
23 morning?
24 MR. MacBRIDE: Yes.

1 JUDGE VON QUALEN: Mr. Berry, would you
2 stand and raise your right hand? Do you swear to
3 tell the truth, the whole truth, and nothing but
4 the truth.

5 THE WITNESS: I do.

6 JUDGE VON QUALEN: You may be seated.

7 Ladies and gentlemen, we've started
8 again.

9 DAVID BERRY,
10 of lawful age, produced, sworn, and examined on
11 behalf of Grain Belt Express, testifies and says:

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. MacBRIDE:

14 Q. Would you please state your name and
15 business address for the record?

16 A. My name is David Berry. My business
17 address is 1001 McKinney Street -- that's M-c
18 capital K-i-n-n-e-y -- Suite 700, Houston, Texas
19 77002.

20 Q. Mr. Berry, who is your employer and
21 what is your present position?

22 A. My employer is Clean Line Energy
23 Partners LLC. My position is executive vice
24 president.

1 Q. Mr. Berry, have you prepared certain
2 testimony and exhibits you wish to offer in this
3 docket?

4 A. Yes, I have.

5 Q. You have before you a copy of a
6 document that's captioned Direct Testimony of David
7 Berry on Behalf of Grain Belt Express Clean Line
8 LLC and is marked for identification as Grain Belt
9 Express Exhibit 11.0?

10 A. I do.

11 Q. Does that document consist of a cover
12 page, table of contents, and 94 pages of questions
13 and answers?

14 A. That's correct.

15 Q. Is Exhibit 11.0 the direct testimony
16 you wish to offer in this case?

17 A. It is.

18 Q. Do you have any corrections or changes
19 to make to that exhibit?

20 A. I have two minor changes.

21 Q. Can you state those, please?

22 A. On page 43, line 890, the figure 83
23 percent should be 98 percent. And on page 892 the
24 figure 83 percent -- excuse me, on line 892, the

1 figure 83 percent should be 90 percent. And I note
2 that's correctly reflected on page 44 and on
3 Exhibit 11.8, but needed to be corrected at those
4 -- at those points.

5 JUDGE VON QUALEN: Would you repeat
6 those corrections for me, please?

7 A. Certainly. On line 890, page 43, of my
8 direct testimony the figure 83 percent should be
9 98, nine eight, percent. And then on line 892 the
10 figure 83 percent should be 90, nine zero, percent.

11 JUDGE VON QUALEN: Thank you.

12 A. And then one other correction or
13 update. On page 93, line 2072 the words "fourth
14 and final" should instead read "third".

15 MR. McNAMARA: What line?

16 A. 2072.

17 MR. McNAMARA: I don't see that.

18 MR. SHAY: It's 2073 on mine.

19 MR. McNAMARA: This is page 93?

20 MR. SHAY: 2073.

21 A. I apologize. 2073.

22 MR. McNAMARA: And once again your
23 correction, sir?

24 A. The words "fourth and final" should

1 instead read "third".

2 MS. ERICSON: Could the witness speak
3 into the microphone, please.

4 THE WITNESS: Can you hear me?

5 JUDGE VON QUALEN: Ms. Ericson, can you
6 hear him now in Chicago?

7 MS. ERICSON: Yes. Thank you.

8 Q. With those revisions, Mr. Berry, if I
9 were to ask you the questions shown on Grain Belt
10 Express Exhibit 11.0 at this hearing today, would
11 you give the same answers?

12 A. I would, with the understanding that
13 there are two topics in my direct testimony that
14 are also covered in my rebuttal testimony and
15 that's the discussion of the EPA's Clean Power Plan
16 and the economic models I ran in this case, and
17 though my direct testimony was true and correct at
18 the time it was filed, my rebuttal testimony
19 reflects the latest information on those topics.

20 Q. Thank you. Now, do you also have
21 before you documents that have been marked for
22 identification as Grain Belt Express Exhibits 11.1
23 through 11.12?

24 A. I do.

1 Q. Are these the exhibits to your direct
2 testimony?

3 A. Yes.

4 Q. Were they prepared under your
5 supervision and direction?

6 A. Yes.

7 Q. Do you have any corrections or changes
8 to make to any of those exhibits?

9 A. I do not.

10 Q. And is the information presented in
11 those exhibits true and accurate to the best of
12 your knowledge and belief?

13 A. It is.

14 Q. Next you have before you a copy of a
15 document that is described as -- or, captioned
16 rather, Rebuttal Testimony of David Berry on Behalf
17 of Grain Belt Express Clean Line LLC and is
18 identified as Grain Belt Express Exhibit 11.13?

19 A. I do.

20 Q. Does that document consist of a cover
21 page, table of contents, and 60 pages of questions
22 and answers?

23 A. It does.

24 Q. Is Exhibit 11.13 the rebuttal testimony

1 you wish to offer in this case?

2 A. It is.

3 Q. Do you have any corrections or changes

4 to make to that testimony?

5 A. I do not.

6 Q. If I were to ask you the questions

7 shown on Grain Belt Express Exhibit 11.13 at this

8 hearing today, would you give the same answers?

9 A. I would.

10 Q. And finally, do you have before you

11 documents that have been marked for identification

12 as Grain Belt Express Exhibits 11.14 through 11.19?

13 A. I do.

14 Q. Are these the exhibits to your rebuttal

15 testimony?

16 A. Yes.

17 Q. Were they prepared under your

18 supervision and direction?

19 A. Yes.

20 Q. Do you have any corrections or changes

21 to make to any of those exhibits?

22 A. No, I do not.

23 Q. Is the information shown on those

24 exhibits true and correct to the best of your

1 knowledge?

2 A. Yes, it is.

3 MR. MacBRIDE: Judge, we offer the
4 exhibits identified by Mr. Berry into evidence.

5 I would also ask that -- there was at
6 least one topic referred by Mr. Galli to Mr. Berry
7 yesterday, several questions concerning the budget
8 for the Grain Belt project. And if I may, I could
9 just have Mr. Berry respond to those questions
10 right now rather than sort of beat around in
11 cross-examination.

12 JUDGE VON QUALEN: Before that, let me
13 ask, were some of his exhibits confidential? Could
14 you identify which one or ones were confidential?

15 A. I'd just like to check with my counsel.
16 The financial statements to my direct testimony.

17 MR. MacBRIDE: Yes.

18 A. Exhibit 11.10, I believe there's both a
19 public version and a confidential version.

20 MR. MacBRIDE: Yes.

21 JUDGE VON QUALEN: And then,
22 Mr. MacBride, would you file an errata, just a
23 simple statement of the couple changes that were
24 made to Mr. Berry's direct testimony? It does not

1 have to be refiled, but he made a couple of changes
2 to the numbers just now.

3 MR. MacBRIDE: So just a document, an
4 errata listing the changes?

5 JUDGE VON QUALEN: Yes.

6 MR. MacBRIDE: Yes.

7 JUDGE VON QUALEN: Okay. You may
8 proceed.

9 Q. (By Mr. MacBride) Mr. Berry, yesterday
10 Dr. Galli was --

11 MR. SHAY: Your Honor, we haven't had a
12 chance to respond to the request that Counsel just
13 made to do this. And I'm going to object. I would
14 prefer that cross-examiners have an opportunity to
15 ask this witness those questions that Dr. Galli
16 kind of referred to this witness instead of having
17 him offer additional direct.

18 MR. MacBRIDE: That's fine. I was just
19 trying to save time and get the information in the
20 record.

21 JUDGE VON QUALEN: All right. Is there
22 cross-examination?

23 MR. SHAY: There is.

24 CROSS-EXAMINATION

1 QUESTIONS BY MR. SHAY:

2 Q. Good morning, Mr. Berry. Bill Shay for
3 Landowners Alliance.

4 A. Good morning.

5 Q. Have you been working for Clean Line
6 since 2009?

7 A. Yes.

8 Q. And has that been full-time?

9 A. Yes.

10 Q. And your only job?

11 A. Yes.

12 Q. Okay. And do you have involvement with
13 the Clean Line board of directors?

14 A. I'm not a member, but I interact with
15 them regularly.

16 Q. Regularly. Do you attend their
17 meetings?

18 A. Usually.

19 Q. Do you prepare reports to the board?

20 A. Yes.

21 Q. Make presentations to the board?

22 A. Yes.

23 Q. Would those reports and presentations
24 include things like Clean Line transmission project

1 updates, regulatory updates, financial updates and
2 reports?

3 A. Yes.

4 Q. As well as other things?

5 A. Yes.

6 Q. Okay. As far as your activities, if I
7 might sort of as I understand it give you a list of
8 those and then you can confirm whether they're
9 correct or not, and then if you have any others to
10 add, you may do so. Do your activities on behalf
11 of Clean Line -- and I say Clean Line. That
12 encompasses all of the -- all five of the project's
13 subsidiaries; correct?

14 A. I'll understand it that way in your
15 question.

16 Q. Okay. So you develop transmission
17 capacity products. You conduct market analyses.
18 You're right in the middle of regulatory approval
19 processes, both at the federal and state level.
20 You negotiate and document investments into the
21 company and additional investments from -- both
22 investments from existing members and additional
23 investments from new members into Clean Line. And
24 then you oversee treasury activities for the

1 company. Do you also oversee accounting?

2 A. I do, though I don't have direct

3 responsibility for it.

4 Q. Okay. Do you have any other major

5 activities that I've omitted?

6 A. That's a complete list, but I'd add I

7 do none of those things by myself.

8 Q. When was the last time that you worked

9 on a major financing to closing?

10 A. Well, I'd consider the financings we've

11 put in place for Clean Line Energy Partners major

12 financing and that would be in the second quarter

13 of this year.

14 Q. Well, but they haven't closed; have

15 they?

16 A. They have.

17 Q. Okay. I'm sorry. I meant to say

18 project financing transactions.

19 A. 2009.

20 Q. Was that for Horizon?

21 A. Correct.

22 Q. Okay. And when was the last time you

23 worked on a power purchase agreement that was

24 executed?

1 A. Also 2009.

2 Q. Okay. Just a few questions about Clean
3 Line's structure and governance. If you can, could
4 you walk us through the ownership of Clean Line
5 Energy Partners, the parties and their percentages?

6 A. Okay. I don't have the exact
7 percentages off the top of my head, but I'll do my
8 best.

9 ZAM Ventures, which is a subsidiary of
10 the Ziff family office, owns approximately 55
11 percent of the common units in Clean Line Energy
12 Partners. National Grid through their subsidiary
13 GridAmerica owns approximately 40 percent. And
14 then the remaining shares -- common units are held
15 by Michael Zilkha, who's an individual, and Clean
16 Line Investments LLC. And then in connection with
17 their most recent investment, Bluescape Resources
18 was issued preferred units, which are another class
19 of units, and Bluescape owns 100 percent of those
20 preferred units.

21 Q. Is there another -- at least one other
22 minority unit holder or group of minority unit
23 holders made up of key employees?

24 A. That's Clean -- they own through Clean

1 Line Investments LLC.

2 Q. Okay. I -- that's separate from

3 Mr. Zilkha?

4 A. Correct.

5 Q. Okay. How much -- what percentage did

6 you say Mr. Zilkha owns?

7 A. I don't have that exactly off the top

8 of my head but less than five percent.

9 Q. Okay. Is Bluescape's preferred

10 interest convertible?

11 A. Under some circumstances, yes.

12 Q. Would that be into -- is it Series E

13 units?

14 A. Yes.

15 Q. Okay. And those would be a class of

16 common units?

17 A. Similar though not identical to the

18 other common units.

19 Q. Okay. Do you know about if those were

20 converted about what percentage of common ownership

21 they would convert into?

22 A. If Bluescape invests 17 million,

23 they're -- and Mr. Blazewicz said this in his

24 testimony -- Bluescape would own slightly over 15

1 percent, which is a correct statement.

2 Q. And would that dilute the interests of
3 other owners?

4 A. Yes.

5 Q. Okay. Would that dilution be pro rata?

6 A. Could you define what you mean by pro
7 rata there?

8 Q. Well, everybody would get reduced -- I
9 believe it would be everybody would get reduced by
10 15 percent that Bluescape would gain. I'm not sure
11 if that's pro rata. That's my understanding of it.
12 If you've got a different one, please let us know.

13 A. If you could restate the question, it
14 would be helpful to me.

15 Q. Okay. I'm just -- the dilutive effect
16 of Bluescape's -- the conversion of Bluescape's
17 preferred units into common units, the diluted
18 effect on the other common owners.

19 A. Okay. And I'm sorry, what's the
20 question?

21 Q. What -- do you know what that -- how
22 that dilutive effect would work?

23 A. Yes, I do.

24 Q. Okay. And how would it work?

1 A. It would -- it would reduce the
2 percentage of distributions to which the other
3 investors were entitled, but it would also remove
4 Bluescape's preferred equity units.

5 Q. Okay. Distributions including periodic
6 distributions and maybe an ultimate distribution if
7 there was a sale of the company?

8 A. Possibly, yes.

9 Q. Could you tell us what kinds of events
10 could trigger the Bluescape preferred unit
11 conversion into common?

12 A. I don't think there's a specific series
13 of events. There are conditions around when
14 they're allowed to convert.

15 Q. Okay. And does that conversion right
16 -- does that belong solely to Bluescape or does the
17 company have a conversion right also?

18 A. It's not either/or. That right belongs
19 to -- and I'm sorry, I need to go back and correct
20 something. Bluescape does not own a hundred
21 percent of the preferred units. They own a large
22 majority of the preferred units.

23 Q. Okay.

24 A. But ZAM Ventures and Michael Zilkha

1 also own a smaller portion of those units.

2 And if you could repeat your new
3 question.

4 Q. We were talking about the events
5 triggering the conversion and I think you said that
6 Bluescape has the right to convert under certain
7 conditions.

8 A. That's right.

9 Q. Okay. And then I asked if the company
10 had a right to force a conversion.

11 A. In some circumstances the company can
12 repurchase their preferred units, yes.

13 Q. In that case would that -- would that
14 take Bluescape out?

15 A. Yes.

16 Q. Okay. If Bluescape were to elect to
17 convert, would that cost them anything? Would they
18 have to pay in any additional funds into the
19 company?

20 A. No.

21 Q. Okay. Is the LLC -- Clean Line Energy
22 Partners LLC a manager-managed company?

23 A. Yes, in the sense that the LLC
24 agreement states that it's manager-managed, but the

1 manager's ability to manage is -- requires
2 conferring with and obtaining the approval of the
3 board and sometimes the shareholders.

4 Q. Well, isn't it true that the members
5 have no authority to participate in the management
6 or affairs of the company other than to elect
7 directors and to make certain decisions for which
8 member approval is required?

9 A. That's correct.

10 Q. Okay. On the board, just so it's clear
11 -- I think this was covered, but I'd like you to
12 confirm that the board members consist of
13 Mr. Skelly, and then from ZAM Messrs. Wallack and
14 Begley, from National Grid Mr. Flynn and Mr.
15 Blazewicz, and then from Bluescape Mr. Wilder and
16 Mr. Fisher?

17 A. That's correct.

18 Q. Okay. If there's new equity issued by
19 Clean Line, who has to approve that before it can
20 be done?

21 A. In all cases the board has to approve
22 it. There are some circumstances in which there
23 are additional approvals required.

24 Q. Okay. Is that a supermajority of the

1 board for that kind of action?

2 A. Again, that would depend on the nature
3 of the issuance.

4 Q. Okay. If it was new issuance of equity
5 capital to raise funds as opposed to say an
6 issuance of equity to employees under the incentive
7 plan, would that require supermajority approval?

8 A. I'm sorry. I'm not clear on that
9 question.

10 MR. SHAY: Okay. I'll withdraw the
11 question.

12 Q. Now, you've been here throughout the
13 hearings, haven't you, this week?

14 A. Most of them.

15 Q. And you've stayed awake?

16 A. Wide awake.

17 Q. Okay. So what is the status of the
18 Iowa utilities board proceeding for the Rock Island
19 project to get approval to build the line?

20 A. I have only a general knowledge of this
21 process because it's managed primarily by our legal
22 department and by the team charged with managing
23 that project. I understand that there is an open
24 docket in Iowa. I understand that we are filing --

1 we have filed an application. I understand that we
2 are working through with the staff certain issues
3 related to the route. And I understand that we are
4 planning to proceed with that document in
5 conjunction with addition -- that docket, excuse
6 me, in conjunction with additional right-of-way
7 acquisition.

8 Q. Okay. Well, that was going to be my
9 next question. What is Clean Line or Rock Island
10 doing with that project in Iowa outside of the
11 regulatory process. So was that a complete answer
12 to that question or is there more you would like to
13 add?

14 A. No, there would be additional things
15 we're doing in Iowa.

16 Q. Okay.

17 A. And on the project. We're working on
18 the interconnection studies in Iowa, working on
19 biological studies. We are working on some
20 right-of-way acquisition. We continue to work on
21 public outreach there. We continue to work on some
22 -- some design aspects of the project in the
23 western converter station. There may be more, but
24 those are the ones that I'm -- I'm aware of off the

1 top of my head.

2 Q. Okay. Now, I believe it was on Monday
3 Mr. Skelly stated that with respect to the Rock
4 Island project Grain Belt is considering its
5 options. Do you remember that?

6 A. Well, Clean Line is considering its
7 options, yes.

8 Q. Yes, okay. And I believe that one of
9 those options that he acknowledged that's possible
10 is abandonment of the project. But the next
11 morning then on redirect, Mr. Skelly stated, like
12 you're stating now, that Grain Belt's continuing to
13 work with customers in the RTO interconnection
14 processes and environmental studies, and he said
15 that the company intended to continue to proceed
16 forward in Iowa.

17 MR. MacBRIDE: Excuse me. Counsel, are
18 you referring to Grain Belt or Rock Island? You
19 said Grain Belt in your question several times.

20 MR. SHAY: I'm sorry. I meant Rock
21 Island.

22 MR. MacBRIDE: Could you restate the
23 question, please?

24 MR. SHAY: Yes, I'd be happy to. I

1 said Grain Belt because my notes say Grain Belt.

2 Q. Mr. Skelly stated that Clean Line is
3 considering its options with respect to the Rock
4 Island project in Iowa, but then the next morning
5 he said that Clean Line's continuing to work with
6 customers through Rock Island and working on the
7 interconnection processes with the RTO and on
8 certain environmental studies, as you've just
9 stated, and he said that the company intended to
10 proceed forward in Iowa. And that's in the face of
11 the recent Iowa Utilities Board decision to deny
12 Rock Island's motion to bifurcate the proceeding
13 there. He also -- my question is, he also said
14 that the company is spending a couple hundred
15 thousand dollars a month I believe is how he
16 phrased it. Do you recall that?

17 A. I actually wouldn't agree with your
18 characterization of his testimony.

19 Q. Okay.

20 A. I at least don't recall him ever saying
21 that we were considering abandoning the project.
22 We are considering our options about how and how
23 fast to move forward in Iowa. That's true.

24 Q. Okay. But the rest of my

1 characterization was accurate?

2 MR. MacBRIDE: Well --

3 A. I --

4 MR. MacBRIDE: Excuse me. Objection.

5 This isn't a memory test. If Counsel has a
6 question about what's being done on the project,
7 that's fine. But the question is, you know, do you
8 remember what Mr. Skelly said?

9 MR. SHAY: Okay. Well, I can rephrase
10 the question.

11 Q. Is what Mr. Skelly described in Iowa
12 consistent with your understanding of what Clean
13 Line is doing in Iowa?

14 A. Well, I think the questions he was
15 asked on redirect were a clearer answer to that
16 question and I agree with his characterization
17 there. I don't agree -- if perhaps he said
18 anything about pausing or not proceeding with the
19 project, that doesn't reflect the plans of the
20 company in my understanding of them.

21 Q. Okay. Thank you. All right. I'd like
22 to move on and talk a little bit about the project
23 financing for the Grain Belt project. I first
24 would like to ask you that -- well, first of all,

1 this is a merchant project; correct?

2 A. In the sense that it is a project that
3 will have specific transmission contracts with
4 customers. I just want to distinguish from what
5 people sometimes mean by merchant which is that
6 it's just selling into a commodity market.

7 Q. Okay. Fair enough. If instead of that
8 kind of a project this was a project that was sort
9 of reported out of a RTO planning process and would
10 be subject to rate recovery or cost allocation so
11 that Grain Belt would have a right to revenues
12 through tariff rates, would that have any impact on
13 how Grain Belt or Clean Line might finance the
14 project?

15 A. We would look to the same sources of
16 capital in both cases. There would be minor
17 differences in the financing just because the
18 stream of revenues would be different. But the
19 many investors, net equity investors that we have
20 identified that would be interested in investing in
21 a so-called merchant line would also be interested
22 in investing in a so-called rate-based line. And
23 in fact, many investors have done both.

24 Q. Okay. I'm trying to get at would any

1 of the terms of the project financing be different,
2 such as the security required by the investors or
3 lenders?

4 A. I think it would be similar. Again, it
5 wouldn't be identical because of the differentness
6 -- different source of revenue, but it would be
7 similar.

8 Q. Would you still need the offtake or
9 power purchase agreements with terms similar to how
10 you've described you need them using the present
11 model that Grain Belt's using?

12 A. I'm having a little trouble
13 understanding that question. If you could restate
14 it.

15 Q. I'd be happy to. Is it correct to say
16 that under the present model that Grain Belt -- the
17 present merchant model that Grain Belt's utilizing
18 that it would be required to enter into offtake or
19 power purchase agreements with shippers or other
20 customers and utilize those as security to finance
21 the construction of the project?

22 A. That's true with respect to
23 transmission service agreements with shippers.
24 It's not true with respect to what we normally call

1 offtake agreements or power purchase agreements.

2 Q. I'm sorry. I misstated that. I meant
3 to say transmission service agreements.

4 A. That's correct.

5 Q. I'm still thinking Mr. Langley. Thank
6 you.

7 Okay. And then so with respect to
8 those transmission service agreements, if you're
9 under a rate recovery model, would those look any
10 different and would your investors' requirements
11 with respect to those agreements be any different?

12 A. They would be different. And I'd say
13 with respect to investors' requirements they would
14 be based on the nature of the revenue stream and
15 the risks associated with it. And on the one hand,
16 the cost of service model has a right to recover
17 under a tariff. On the other hand, it's subject to
18 change over time based on regulatory cases and so
19 forth. And so -- or interest rate changes or cost
20 changes. So there may be provisions dealing with
21 that. And on the other hand, the transmission
22 service agreements would be with a group of
23 individual customers, and I expect there would be
24 provisions in a loan or equity agreement that are

1 commensurate with those agreements to make sure
2 that they remain in force and continue to provide
3 revenue.

4 Q. But under a rate recovery model
5 wouldn't Grain Belt have the continuing right to
6 revenues under its tariffs regardless of whether it
7 continued to have transmission service agreements
8 in place?

9 A. I wouldn't agree with that because in a
10 rate recovery model in fact there is a -- it's not
11 an identical transmission service agreement, but
12 there are agreements that the utility provide its
13 transmission capacity to customers, allow open
14 access, and respond as it's supposed to to
15 customers' requests. So as I understand it, the
16 right to recover costs is conditioned on complying
17 with all of that voluminous regulation.

18 Q. Okay. Might the terms of the
19 transmission service agreements under a rate
20 recovery model be different than under the merchant
21 model?

22 A. Yes.

23 Q. Okay. You talk in your testimony about
24 the so-called CREZ transmission projects; is that

1 correct?

2 A. I do.

3 Q. That would be included at pages 76
4 through 78 of your direct testimony, Exhibit 11.0?

5 A. That's correct.

6 Q. Could you just state for the record
7 what CREZ stands for?

8 A. Competitive Renewable Energy Zone.

9 Q. Thank you. Now, isn't it true that
10 those projects, the transmission projects really
11 came out of that RTO planning process and that RTO
12 being the Electric Reliability Council of Texas or
13 ERCOT?

14 A. Well, ERCOT isn't an RTO. It functions
15 similar to an RTO.

16 Q. Okay.

17 A. And I'd say there were a number of
18 factors behind these lines. It wasn't just simply
19 the result of a planning process. It was the
20 result of a -- of numerous other factors as well.

21 Q. Didn't ERCOT make a determination of
22 need for those transmission projects?

23 A. They issued certificates related to
24 need, but the legislature and the governor and

1 other stakeholders were also involved.

2 Q. Okay. You said they issued
3 certificates for need. Does that reflect a
4 determination of need?

5 A. It was actually the Public Utilities
6 Commission of Texas who issued those certificates.
7 And the factors they considered in those was not
8 just the ERCOT studies but also relevant
9 legislation and some other factors.

10 Q. Okay. But the question again is, did
11 ERCOT or did it not make a determination of need
12 for those transmission projects?

13 A. I don't know if ERCOT made a separate
14 determination of need from the Public Utilities
15 Commission of Texas.

16 Q. Well, there was some -- a governmental
17 regulatory body determination of need for those
18 projects. Can we say that?

19 A. Yes.

20 Q. Those merchant -- those projects --
21 transmission projects in Texas that connect up the
22 wind farms within those renewable energy zones are
23 not merchant projects; are they? Rather, they're
24 rate recovery projects?

1 A. They're CREZ lines. That's correct.

2 Q. And that affected the financing profile
3 for those transmission owners?

4 A. It was certainly considered in the
5 financing of those.

6 Q. Okay. Didn't those CREZ transmission
7 projects have significant cost overruns?

8 A. I know that there were at least one or
9 two projects that had cost overruns. I'm not aware
10 if the entire body of them had cost overruns or
11 not.

12 Q. Were some of those cost overruns 30
13 percent or more?

14 A. Don't know.

15 Q. You were here, weren't you, for Dr.
16 McDermott's testimony?

17 A. I was.

18 Q. Okay. Do you remember that somewhat
19 long question I had for him that listed quite a few
20 conditions?

21 A. I remember you asking it. I don't
22 remember exactly what the question was.

23 Q. Okay. Well, I'd like to ask you that
24 question but I don't think I need to preface it

1 with all those conditions and I can just jump to
2 the end. And the point of the question was that
3 assume that this project gets approved, financed,
4 constructed, and put in commercial operation, and
5 then sometime later, and it could be some years
6 later, that the owner identifies a need or a desire
7 to make significant changes, modifications,
8 upgrades of some sort that require additional
9 outside capital. And the question is, up to that
10 point in time if the project has been
11 underperforming financially, that is not recovering
12 its initial capital costs as expected, could that
13 factor of underperformance affect the availability
14 or terms of the new funds needed to finance those
15 capital expenditures?

16 A. I think it would be a minor
17 consideration because any new investment is going
18 to be primarily forward-looking rather than past
19 performance. So I think at that point in time
20 investors would look primarily at the cost-benefit
21 of that particular investment rather than on any
22 historical results.

23 Q. Would you agree that past performance
24 is an indicator of future performance?

1 A. In some circumstances.

2 Q. Okay. At least in that situation then
3 would it be helpful if the owner of the project was
4 not underperforming financially in terms of the
5 availability and terms of new capital required?

6 A. I think I've answered that, which is
7 that the terms and availability of new capital
8 would be entirely based on the nature of the
9 investment and the return on that investment. It
10 wouldn't be based on historical performance or
11 underperformance.

12 Q. So are you saying that the prospective
13 providers of new capital would ignore past
14 performance of that project for which they're being
15 asked to invest additional money?

16 A. I don't know if it's correct to say
17 they'd ignore it, but they would evaluate the new
18 investment in its own right.

19 Q. Right. And would one of those factors
20 in that evaluation be how the project has performed
21 to date financially?

22 A. It may or may not be. I mean, they'll
23 do a comprehensive evaluation of their new
24 investment and the return they expect on it and the

1 risks associated with it.

2 Q. Okay. Under what --

3 A. And if I can just finish.

4 Q. Okay, please do.

5 A. I mean, there are some circumstances
6 where the past performance could be an indicator
7 and there are other circumstances where it really
8 wouldn't be. I mean, it could be the case that
9 underperformance can be cured by additional
10 investment.

11 Q. Okay. Would it be fair to say then
12 those prospective investors would be at least
13 looking at past performance and seeking an
14 explanation for any underperformance?

15 A. I agree with that.

16 Q. Okay. And if they didn't get an
17 explanation that made them comfortable, it might
18 affect the availability and terms of the new
19 capital?

20 A. I'd agree with that.

21 Q. Okay. Thank you. A few questions
22 about the transmission service agreements. About
23 how much of the line's capacity would you expect to
24 be under contract through transmission service

1 agreements up-front prior to project financing be
2 closed?

3 A. Well, we're aiming for as much as
4 possible.

5 Q. Okay. What would you say the minimum
6 would be?

7 A. To proceed with financial close?

8 Q. Yes.

9 A. I'd say at least 50 percent.

10 Q. 50 percent of the 4,000 megawatt
11 capacity?

12 A. Correct.

13 Q. Okay. Do you have -- of the total
14 transmission service agreements that you would
15 expect to have in place prior to financial close
16 can you say about what portion in terms of
17 megawatts would be with wind developers versus load
18 serving entities and power marketers on the other
19 end?

20 A. I can't say with specificity. I expect
21 it would be more likely wind generators than the
22 second group of entities you mentioned.

23 Q. Slightly more?

24 A. I couldn't say.

1 Q. Okay. And would those transmission
2 service agreements be long term?

3 A. Yes.

4 Q. Would that be ten years or more?

5 A. Yes.

6 Q. Would you expect they would be fixed
7 price agreements?

8 A. Either fixed price or with
9 predictability escalators. To the extent there are
10 any adjustments in the price, those would be
11 transparent and documented up-front. It certainly
12 wouldn't be the case where they would change
13 without explanation over time.

14 Q. Okay. So in looking at counterparties
15 such as shippers on the western end, like Mr.
16 Langley's company, would you be looking for high
17 credit quality counterparties?

18 A. Yes.

19 Q. Okay. How would you expect a company
20 like Infinity to achieve that?

21 A. Well, I mean, he mentioned that they
22 had brought in as financial partners NextEra,
23 SunEdison, EDF. These are some of the biggest and
24 most reputable energy companies in the world. So

1 their past financing model is one that we would be
2 very comfortable in working with.

3 Q. Okay. So you wouldn't rely on
4 Infinity's creditworthiness itself; correct?

5 A. We would rely on the creditworthiness
6 of the wind project, which is very substantial, and
7 then in addition the creditworthiness and track
8 record of the sponsor equity, as Mr. Langley
9 described it, which would come from the sort of
10 companies that I mentioned a moment ago.

11 Q. Okay. So you need exterior capital
12 providers to Infinity in order to get that high
13 credit quality counterparty; correct?

14 A. Yes, that's correct.

15 Q. Okay. Do you expect any non-wind
16 electric power generators to be interested in
17 subscribing for capacity on the line?

18 A. The only possibility that I really see
19 is for solar developers. We haven't had any
20 concrete interest yet. I would say for other kinds
21 of generation there's really no economic case to
22 buy transmission service on our project.

23 Q. Okay. Would you make that capacity
24 available to non-wind generators such as solar or

1 others?

2 A. Yes.

3 Q. Even fossil fuel generators?

4 A. Again, if they could meet our
5 requirements for shippers and pay the necessary
6 charges, it would be available. But I don't -- I
7 don't think they'd ever find it in their economic
8 interest to describe to that capacity.

9 Q. Well, for example, if shale oil was
10 discovered in western Kansas and some enterprising
11 companies wanted to build a power plant to burn the
12 fuel from that, would Grain Belt entertain requests
13 for transmission service from such a generator?

14 A. We are obligated by FERC open access to
15 those because we're a public utility to entertain
16 it, but I would strongly suggest to them that they
17 build a pipeline instead of using our line.

18 Q. Well, if they didn't take your
19 suggestion and they instead wanted to build a
20 generator right there, would you still entertain
21 their request for transmission?

22 A. As I said, we're required to.

23 MR. SHAY: Okay. Thank you. That's
24 all I have. Thank you, Mr. Berry.

1 JUDGE VON QUALEN: Mr. Davis?

2 MR. DAVIS: Your Honor, I discussed
3 briefly with Mr. MacBride before. I do have some
4 questions that will probably fall within the
5 Protective Order and my suggestion is that we wait
6 until the very end of Mr. Berry's testimony so we
7 can just handle those all at once.

8 JUDGE VON QUALEN: That's fine.

9 CROSS-EXAMINATION

10 QUESTIONS BY MR. DAVIS:

11 Q. Mr. Berry, my name is Chuck Davis. I'm
12 an attorney for the Illinois Farm Bureau and I have
13 Laura Harmon here. I have some questions for you
14 and if something is not clear, if you can't hear
15 me, just let me know. Okay?

16 A. Good morning, Mr. Davis, and will do.

17 Q. Where I'd like to start is the cost of
18 the project. When looking at the direct testimony
19 that's been submitted and some of the testimony
20 that's come out this week in cross-examination,
21 it's a little bit difficult to determine the total
22 costs of this project. I've heard numbers like 2.2
23 billion, 2.75 billion. Can you provide your
24 opinion on what the cost of this project will be?

1 A. Yes. And I actually think the
2 testimony in this case is very clear. There's been
3 two cost estimates presented.

4 One is 2.2 billion. And when we've
5 presented that, we've specifically noted that it is
6 not including the cost of network upgrades which
7 Dr. Galli described. He described the upgrades,
8 that is.

9 And the other cost is 2.75 billion,
10 which is the 2.2 billion cost plus an additional
11 \$550 million of upgrades, which encompasses all the
12 network upgrades and other upgrades across the
13 three RTOs that we expect to incur. And in the
14 financial models in this case we've always used
15 2.75 billion. And in the financing condition,
16 which Staff witnesses previously discussed and
17 which is discussed in my direct testimony, we've
18 also used 2.75 billion.

19 Q. So to be specific, when we spoke with
20 Mr. Galli yesterday -- you were here during his
21 testimony; correct?

22 A. I was.

23 Q. And do you recall that in several
24 instances on issues such as this, the total cost

1 for the project, he said things like Mr. Berry's
2 probably the best to testify to that? Do you
3 remember that?

4 A. I do.

5 Q. So when he -- he talked about SPP first
6 and about the \$2.2 million in attachment upgrades
7 that were required, he was unsure whether those
8 were encapsulated within the total project cost or
9 what that total project cost would be. What's your
10 -- what is the case? I guess is my question.

11 A. Well, as I mentioned, all of the
12 upgrade costs in SPP are included in the \$2.75
13 billion number, which is what we've used in various
14 places in the testimony, and that's what's been
15 used in all the financial analysis and the
16 financing condition.

17 Q. Then with MISO he testified related to
18 10 million to \$20 million potential attachment
19 upgrades. Is that the same answer with regard to
20 that -- that amount?

21 A. Yes, sir.

22 Q. And then with PJM he said the number
23 five million. And so would your answer be the same
24 related to that amount of money?

1 A. Well, that's too low an estimate. But,
2 yes, the PJM upgrades are included in the 2.75
3 billion.

4 Q. Okay. You say the number is too low.
5 What is the accurate number?

6 A. Approximately 500 million.

7 Q. Specifically, and I could refer to his
8 testimony if need be, if this is outside of your
9 knowledge, but for the 500 million portion of that
10 number, does that have to do with the transmission
11 line from -- a new transmission line from Sullivan
12 substation to Northern Indiana Public Service
13 Company's new Reynolds substation?

14 A. No, that's not the specific upgrade
15 we've included in the project cost estimate.

16 Q. Okay. So that is listed here as \$500
17 million as an upgrade. So is this another \$500
18 million that you're referring to? I guess I'm
19 confused.

20 MR. MacBRIDE: Excuse me, Counsel, when
21 you say it's listed here, what are you referring
22 to.

23 Q. It's listed in Mr. Galli's direct
24 testimony starting at lines 675. Which I know you

1 don't have in front of you but --

2 A. Could you just repeat the question for
3 me, please?

4 Q. Sure. Subject to check, his testimony
5 states regarding PJM required upgrades from a
6 Facilities Study to include a new transmission line
7 from Sullivan substation to Northern Indiana Public
8 Service Company's new Reynolds substation at an
9 estimated cost of \$500 million. You said before
10 that my number was too low when I said five
11 million. You said it's more like 500 million. So
12 is this new \$500 million figure I just gave you
13 related to this Sullivan substation to Northern
14 Indiana's Reynolds station, is that another 500
15 million?

16 A. No. So the record's clear -- and I
17 believe this is discussed in Dr. Galli's testimony
18 -- we have -- we are undergoing studies with PJM,
19 and they and we have initially agreed that there's
20 an alternative upgrade, which is from Sullivan
21 substation, our point of interconnection, to the
22 Jefferson substation in Indiana. It's also a 765
23 kV line but that based done on the studies we've
24 done to date would eliminate the need for the

1 Sullivan to Reynolds line. And, therefore, the 500
2 million for the Sullivan to Jefferson line is not
3 in any way additive to the Sullivan to Reynolds
4 line, which Dr. Galli discussed as a different
5 option for that network upgrade.

6 Q. Generally speaking, when talking about
7 the incomplete studies that exist right now in SPP,
8 MISO, and PJM, is it correct that when they're
9 completed it could result in additional costs that
10 you're unaware of right now?

11 A. I don't have any reason to think they
12 will because all of those studies have come up with
13 a determination of the upgrades needed and, you
14 know, we have cost estimates we're confident in for
15 each of those upgrades.

16 Q. Is it possible?

17 A. It's theoretically possible.

18 Q. And is it possible that those cost
19 upgrades would be required at a time after this
20 Commission has already issued its opinion in this
21 matter?

22 A. Again, I think it's unlikely, but it's
23 theoretically possible.

24 Q. So you testified earlier about the

1 ownership structure of Clean Line Energy Partners
2 and the different funding requirements. Are you --
3 I don't know that you testified completely to the
4 funding requirements of the different owners. Am I
5 correct that there were some original owners of
6 this company, Clean Line Energy Partners, before
7 National Grid came into the picture?

8 A. That's correct.

9 Q. And for the purposes of making the
10 record clear, we'll call these the founding
11 members. Who were the founding members of Clean
12 Line Energy Partners?

13 A. And so I'm clear, you're asking who was
14 a member of Clean Line Energy Partners prior to the
15 date that National Grid became an investor?

16 Q. Correct.

17 A. Okay. That's ZAM Ventures, which is
18 the Ziff family office subsidiary, Michael Zilkha,
19 and Clean Line Investments LLC.

20 Q. Prior to -- prior to National Grid
21 becoming a member of the company, how much had the
22 three founding members of the company invested into
23 Clean Line Energy Partners?

24 A. I don't have an exact figure.

1 Q. When did National Grid come into the
2 picture as one of the owners of Clean Line Energy
3 Partners?

4 A. They signed a subscription agreement
5 November 2012. They made their first capital
6 contribution in January 2013.

7 Q. And how much was the commitment?

8 A. 40 million.

9 Q. And am I correct that the 40 million
10 was funded over time; it wasn't all paid at one
11 time?

12 A. Yes.

13 Q. And did that occur over a period of
14 between a year and year and a half? Is that
15 accurate?

16 A. Over a year. I'm not sure whether it
17 was shorter or longer than a year and a half.

18 Q. Now, you stated that they signed --
19 when I say they, National Grid signed a
20 subscription agreement related to the funding of
21 this commitment. Is that correct?

22 A. Yes.

23 Q. Once the funding commitment was
24 complete, was the subscription agreement canceled

1 or completed or no longer in effect? Do you have
2 any idea?

3 A. I'd say it was completed. I mean, once
4 a -- as is typical under a subscription agreement,
5 once the obligations under that subscription
6 agreement are fulfilled, there's no longer any need
7 for the agreement. But I would note that National
8 Grid still had rights under our shareholder
9 agreement or LLC agreement to continue investing
10 and that's how they invested the additional capital
11 beyond the 40 million.

12 Q. In the shareholder agreement in -- so
13 this is apparently in excess of the initial 40
14 million. Under the terms of the shareholder
15 agreement how much money is National Grid given the
16 right to invest?

17 A. There's no specific amount.

18 Q. How is it triggered? Can National Grid
19 invest any amount they want at any time or how
20 would that occur?

21 A. And just to be clear, are you asking
22 about our current LLC agreement or the LLC
23 agreement that was in place after National Grid
24 completed its 40 million?

1 Q. Well, you referred to a shareholder
2 agreement. Is the shareholder agreement the
3 operating agreement? Is that the term of art?

4 A. Yes. I'm using the terms shareholder
5 agreement and operating agreement interchangeably
6 here.

7 Q. Okay. So how many versions of an
8 operating agreement have you gone through?

9 A. I believe we're on our fourth amended
10 and restated LLC agreement.

11 Q. And which operating agreement would
12 have been National Grid's first agreement when they
13 were in the picture?

14 A. I believe the third.

15 Q. So under the terms of that operating
16 agreement what rights did they have relating to
17 investing more funds?

18 A. They had numerous rights. In some
19 circumstances they had the right to fund a hundred
20 percent of the next -- the next investment. In
21 some cases it was just pro rata. And by pro rata I
22 mean commensurate with their share of the common
23 equity ownership of the company.

24 Q. Were these rights unilateral, meaning

1 they could show up with a check and say take my
2 check, give me more of the company, or were there
3 certain authorizations that were required?

4 A. The latter.

5 Q. And what generally speaking would have
6 been those authorizations?

7 A. Most important is that the company
8 actually needed funds. I'm sure there were others,
9 but I don't know them sitting here today.

10 Q. And so National Grid ended up investing
11 money at two more times after the completion of
12 their \$40 million investment; is that correct?

13 A. I don't remember whether it was exactly
14 two times.

15 Q. Do you know what the total amount was
16 that National Grid invested over the \$40 million?

17 A. Approximately 15 million.

18 Q. Under the third version of the
19 operating agreement did National Grid have the
20 right to buy out Clean Line Energy Partners as a
21 whole or any of its subsidiaries?

22 A. Yes.

23 Q. Was that yes to both, as to
24 subsidiaries and the parent company, Clean Line

1 Energy Partners?

2 A. Yes.

3 Q. Did National Grid have any rights in
4 the third operating agreement related to taking
5 over operational control of any of the projects?

6 A. They had the right to purchase them but
7 not to take control of the projects themselves.

8 Q. These rights of National Grid that
9 we've talked about to invest more money and to take
10 over ownership like you've described, did those
11 rights carry over from the third operating
12 agreement to the fourth operating agreement?

13 A. Some but not all.

14 Q. Okay. Which did and which did not to
15 the best of your recollection?

16 A. The rights to continuing investing in
17 some circumstances subject to conditions did
18 continue. The rights to purchase the projects and
19 the company were significantly modified.

20 Q. How so, if you can generalize?

21 A. I'm trying to formulate a response that
22 doesn't require me to disclose confidential
23 information.

24 The right to purchase was modified to

1 be a right of first offer.

2 Q. So kind of like my example before, they
3 can't just walk in with a check now and say give me
4 the company. There actually has to be a desire of
5 the company to sell first?

6 A. Well, they never could just walk in
7 with a check.

8 Q. The second half of my answer -- or, the
9 second half of my question, though, is accurate,
10 that there has to be a desire of the company to
11 sell, like some sort of board directive, then they
12 get the first right?

13 A. That -- that's not an exact explanation
14 of -- of what would happen, but I will say, in
15 trying to avoid having to answer this
16 confidentially, that it is not a unilateral right.
17 There has to be actions taken by other members
18 related to wanting to sell a part of their interest
19 in order for this right of first offer to be
20 triggered.

21 Q. And you said that the fourth operating
22 -- fourth amended operating agreement is the most
23 current version of the operating agreement; is that
24 correct?

1 A. That's correct.

2 Q. If I say a required capital
3 contribution versus an optional capital
4 contribution, would you know what I mean when I say
5 that?

6 A. Generally, yes.

7 Q. At this time does National Grid have
8 any required capital contributions of it under the
9 terms of the fourth amended operating agreement?

10 A. None that they are legally bound to
11 make.

12 Q. As to the founding members the same
13 question.

14 A. It's the same answer.

15 Q. Do the founding members at this time
16 under the fourth amended operating agreement have
17 the option to contribute more capital?

18 A. Yes. In certain situations, yes.

19 Q. When Bluescape came into the picture,
20 they ultimately signed the fourth amended operating
21 agreement and then a subscription agreement; is
22 that correct?

23 A. They were signed simultaneously.

24 Q. And it's yes that they -- I'm sorry,

1 just for the record, they signed these two
2 agreements; is that correct?

3 A. Yes, they signed both agreements.

4 Q. And as a part of Bluescape's commitment
5 how much is a required capital contribution and how
6 much is an optional capital contribution for that
7 investor?

8 A. So they are legally bound to make a \$17
9 million investment subject to the company calling
10 the capital, and they have an additional option to
11 invest \$33 million, bringing the total to 50
12 million.

13 Q. How much of the 17 million has been
14 funded?

15 A. Twelve.

16 Q. When is the other five going to be
17 funded?

18 A. When the company needs the capital.
19 Don't have a specific date.

20 Q. Was Bluescape's investment contingent
21 on any regulatory approvals in any states or
22 otherwise?

23 A. Not their initial \$12 million
24 investment.

1 Q. What other amounts are subject to
2 regulatory approval?

3 A. So that the \$5 million investment we're
4 seeking -- we have a petition in front of the
5 Oklahoma Corporation Commission. I think there's
6 some discussion about whether approval is actually
7 needed, but we're seeking confirmation that it
8 isn't needed or the approval if it is needed.

9 Q. What project is that for?

10 A. The Plains and Eastern Clean Line
11 project.

12 Q. So what -- I'm not involved in that
13 project or know Oklahoma law. What's the rationale
14 why you may have to get approval?

15 A. There are certain provisions related to
16 the change in control of a public utility under the
17 Oklahoma statutes. I -- I am not familiar with the
18 details of those -- of that statute.

19 Q. So you filed some sort of petition or
20 something with their Commission similar to the ICC
21 to seek this approval. Is that what's happened?

22 A. We made a filing, as I mentioned, that
23 either requested the necessary approval and relief
24 or asked for confirmation that we didn't need such

1 approval.

2 Q. Okay. When was that filed?

3 A. In the last two months.

4 Q. Again, I'm not an Oklahoma lawyer. How

5 long does this process take do you believe?

6 A. I also am not an Oklahoma lawyer. It's

7 quick. I know there's a deadline in the statute to

8 make a decision and the Oklahoma Corporation

9 Commission usually moves pretty fast. We sought a

10 similar approval from National Grid -- when

11 National Grid became an investor and we got the

12 approval very promptly.

13 Q. Okay. Do you know what the deadline

14 is?

15 A. No.

16 Q. With National Grid how long did it take

17 you to get the approval?

18 A. Under three months. I don't know more

19 specifically than that.

20 Q. Will you have to go back to Oklahoma

21 for further approvals for the rest of this

22 investment capability of Bluescape? Meaning, just

23 to make sure you understand my question, you have

24 to go back apparently for five million now. If

1 they wanted to invest their 33 million at some
2 point later, would you have to go back again?

3 A. I'm not aware of any further approvals
4 we need with respect to the balance of their
5 investment.

6 Q. Do you know what the Oklahoma
7 Commission looks at in a petition like this? Is
8 there -- why they would approve it or deny it? Do
9 you have any idea?

10 A. No, I don't.

11 Q. I mean, there's like a statutory
12 criteria that needs to be met probably; is that
13 right?

14 A. I know it's addressed in the statute.
15 I'm not sure how much the criteria govern and how
16 much is left to the Commission's discretion.

17 Q. Do you know what the statutory
18 characteristics are that an investor must have in
19 order to be approved?

20 A. I don't know.

21 Q. Before Clean Line Energy Partners
22 sought out the investment from Bluescape -- I
23 guess, let me -- let me strike that and go back a
24 little bit.

1 At some point earlier this year Clean
2 Line Energy Partners determined that it needed more
3 money; is that correct?

4 A. Correct.

5 Q. And how much money did it determine
6 that it needed in order to proceed forward with the
7 company?

8 A. We wanted to raise enough money to be
9 able to achieve the next round of milestones on our
10 projects and, though we discussed slightly
11 different amounts at different times, it was in the
12 range of the \$17 million that Bluescape ended up
13 making a firm commitment to invest.

14 Q. When you say next round of milestones,
15 that would have a period -- there would be a period
16 of time that would be attributed to that; correct?

17 A. Yes.

18 Q. What is that period of time?

19 A. Through -- we don't know the exact
20 timing of the milestones because we don't control
21 all of them, but I would say through the first part
22 of 2016.

23 Q. What would the first part be? Like
24 January 1 or are you talking in the first quarter?

1 What exactly are you referring to?

2 A. It's later than January. I -- I --
3 it's actually the case that the more successful we
4 are the faster we spend the money because we have
5 new things to work on. I couldn't be more specific
6 than what I've said. Certainly not in January, but
7 in the first half of the year we expect to achieve
8 those milestones.

9 Q. Now, there was a round of new capital
10 contributions from all the owners other than
11 Bluescape earlier this year; correct?

12 A. From Ziff, ZAM Ventures, and National
13 Grid.

14 Q. Ziff, ZAM Ventures, and National Grid.
15 Do you recall what those amounts total?

16 A. It was approximately 7.5 million from
17 National Grid and two to three million from ZAM
18 Ventures.

19 Q. And how much from Ziff?

20 A. ZAM Ventures and Ziff -- ZAM Ventures
21 is the subsidiary of the Ziff family office, so --
22 I'm trying to say ZAM Ventures, but I'm referring
23 to the same entity.

24 Q. So we're talking about around ten

1 million?

2 A. Yes.

3 Q. So do you recall the dates around when
4 those would have been invested?

5 A. I don't know -- I don't recall the
6 specific dates.

7 Q. A month or the first quarter, second
8 quarter? Do you have any recollection?

9 A. This particular financing was in the
10 first quarter.

11 Q. First quarter. When did you make the
12 determination -- and when I say you, I mean Clean
13 Line Energy Partners -- that it needed this \$10
14 million that we just talked about?

15 A. We had anticipated that we would need
16 it for a long time. It wasn't that there was a
17 specific date we decided. We shared our budget
18 with the board. We discussed it and everyone
19 understood that we would need new capital at that
20 point in time.

21 Q. Was it before or after you determined
22 you needed \$17 million to get you through
23 milestones into the first quarter of next year?

24 A. I would say it was before that we

1 anticipated we would need new capital in the first
2 quarter of this year.

3 Q. Were you -- I need to quit saying you.
4 When Clean Line Energy Partners sets milestones and
5 budgets, is it always about a year time period or
6 what are these time periods that you're looking at?

7 A. In Texas we say ya'll, so if that
8 helps.

9 It is for a year period that we
10 actually approve a budget. But then we have a
11 longer term forecast so the board understands the
12 needs of the company for a period longer than a
13 year.

14 Q. So when -- when ya'll determined --
15 that's the last time. I'll only do that once --
16 that you needed 17 million, did you offer that
17 first to your existing owners?

18 A. There wasn't a formal process where we
19 offered it to them first because this was a
20 decision that was reached with the board that we
21 would explore opportunities to bring in outside
22 capital. So the discussion we had is, if we could
23 obtain outside capital on terms that everyone liked
24 and were good for the company with a partner that

1 was good for the company, we would bring in the
2 outside capital. If not, we would continue to work
3 inside.

4 Q. I mean, did you specifically ask any of
5 the current owners for more money and they said no?

6 A. No. I mean, we're actually obligated
7 to do that under our shareholder agreement, but
8 everyone waived that because it was a collaborative
9 discussion that was ongoing.

10 Q. Did National Grid or does National Grid
11 in any operating agreement or other agreement
12 whatsoever have the right to participate in the
13 day-to-day management of the company?

14 A. Not the day-to-day management. I mean,
15 they regularly advise us and we regularly ask their
16 advice, but not the day-to-day management.

17 Q. So would the only management authority
18 National Grid have be at the board level?

19 A. The only formal decision-making
20 authority they have is at the board level, but in
21 terms of managing the company, meaning doing all
22 we've planned to execute our projects, they're
23 involved at much more than the board level.

24 Q. Did National Grid ever make it a

1 contingency of their investment that they have the
2 ability to advise on how to run the company?

3 A. It wasn't legally documented, but it
4 was our understanding that they would help with
5 certain aspects of the company, and it's part of
6 the value they saw and part of the value we saw.

7 Q. When we talked before about whether
8 this \$17 million need for funds was first offered
9 to the existing owners and you said that none of
10 them decided to do that, instead you wanted to go
11 with a new investor, were any of these rights of
12 first refusal that the current owners had at the
13 time -- was the waiver of those rights documented?

14 A. Well, I don't agree with the way you
15 characterized my answer to the first -- the prior
16 question. But I'll just narrowly answer was their
17 right to participate waived. And I believe it was
18 in connection with documenting the Bluescape
19 investment. They specifically said at this point
20 in time we want to bring in outside capital.

21 Q. There was discussion before with
22 Mr. Shay that you acknowledged that Clean Line
23 Energy Partners is a manager-managed company, not a
24 member-managed LLC; is that correct?

1 A. That's correct. Though I think I also
2 qualified that that's true legally speaking, but
3 the board's also involved and other people are also
4 involved in how we actually run the company.

5 Q. But the members legally don't have the
6 right to manage the company; is that correct?

7 A. They do have the right to participate
8 at the board level. They don't have the right to
9 make day-to-day decisions that don't rise to the
10 level of a board decision.

11 Q. Before Bluescape invested, do you know
12 off the top of your head the total amount of
13 capital that had been invested in the company to
14 date?

15 A. Approximately 120 million.

16 Q. At that point how much of that 120
17 million had been spent?

18 A. I don't know exactly, but the big
19 majority. As we've discussed in this proceeding,
20 we raise capital when we need it, not just to keep
21 it sitting around.

22 Q. So you're testifying it was almost all
23 gone?

24 A. Well, I'll say this, we'd spent the

1 great majority of it. We needed to raise
2 additional capital to keep pursuing our projects.

3 Q. How would you define a great majority
4 of 120 million?

5 A. I think great majority means much more
6 than half.

7 Q. Can you give an at least number?

8 A. Yeah, I'd say we -- and I'm sorry, can
9 you repeat the question as to the moment in time
10 you're referring to?

11 Q. Yeah. The timing was before Bluescape
12 invested. So if you want to call it the day before
13 or whatever?

14 A. Yeah.

15 Q. You said up to that point 120 million
16 had been invested?

17 A. Right.

18 Q. I'm curious how much of that was gone
19 at this point.

20 A. I would say we had less than five
21 million of cash available at that time. We did
22 have some other assets.

23 Q. So I understand from other testimony
24 and kind of what you just said that money is

1 injected into the company when it's needed;
2 correct?

3 A. Correct.

4 Q. So it has not been the practice of
5 Clean Line Energy Partners to park large capital
6 contributions. Instead, it's funded over time by
7 capital calls; is that right?

8 A. Correct.

9 Q. Now, at this time, at the time that we
10 just talked about, right before Bluescape invested
11 you said it got -- the amount of capital got down
12 to less than \$5 million. Prior to other capital
13 calls is that -- would that be a consistent number,
14 that you'd get down to about \$5 million or do you
15 -- do you know would it be less than that, more
16 than that?

17 A. I couldn't generalize. But I mean, I'd
18 say the relevant thing for managing the company is
19 the capital that we have available and the capital
20 that has -- we have a right to draw, not how much
21 we have in our bank account. So that's -- that's
22 something we monitor, of course, but it's not the
23 primary thing we focus on.

24 Q. Am I correct that National Grid's

1 funding of their original 40 million ended around
2 the beginning of 2014? Is that correct?

3 A. I know it was in 2014. I don't -- I
4 don't know when.

5 Q. So from that time period, beginning of
6 2014 until the additional roughly \$10 million was
7 invested earlier this year, the company didn't have
8 the right to call on any required capital
9 contributions at all; is that correct?

10 A. That's correct. But we regularly
11 discussed with our board and our current investors
12 where the next capital would come from, and we had
13 a plan of who would provide it and when we would --
14 we would call it.

15 Q. You're the responsible employee at the
16 company for raising capital; is that correct?

17 A. I have a large role in it. I'm not the
18 sole person who works on it, by any means.

19 Q. So since the beginning of the company,
20 if we're talking about a date immediately preceding
21 the funding of a new capital call, what's the
22 lowest cash balance that you can recall in the
23 company?

24 A. I don't know other than what I

1 previously said, under \$5 million. Because what I
2 focus on is the amount of capital that we either
3 have a legal ability to draw or that we have a
4 clear line of sight to being able to draw.

5 Q. Do you know if the number ever was less
6 than one million?

7 A. I don't think it was.

8 Q. I'm going to refer to the projects
9 generically, which would be these different
10 projects you have across the country. Am I correct
11 that they were planned and conceptualized before
12 National Grid became an owner of Clean Line Energy
13 Partners?

14 A. Four of the five.

15 Q. Which one was not?

16 A. The Western Spirit project.

17 Q. Am I correct that's the smallest
18 project of all the projects?

19 A. That's correct.

20 Q. And that's confined within just the
21 state of New Mexico?

22 A. Yes.

23 Q. And it's a 200-mile project at \$400
24 million?

1 A. Approximately.

2 Q. And the rough total of all of the
3 projects together is about \$10 billion?

4 A. Yes.

5 Q. So it would be accurate to say that of
6 all the projects that \$9.6 billion of the projects
7 were conceptualized and planned before National
8 Grid became an owner of Clean Line Energy Partners?

9 A. I don't think I could provide too
10 significant figures on that, but over 90 percent of
11 the capital investment certainly was related to
12 projects that were planned prior to National Grid's
13 involvement.

14 Q. And the plans were developed by the
15 board; is that correct?

16 A. Not exclusively.

17 Q. Would they have been developed at the
18 board's direction and ultimately approved by the
19 board?

20 A. Yes.

21 Q. And who would have been on the board at
22 that time?

23 MR. MacBRIDE: Objection. Can you
24 clarify what that time is, what time you're

1 referring to?

2 Q. This would have been at the time
3 preceding National Grid being an owner and I guess
4 more specifically at the time when the projects
5 were in the initial development stage.

6 A. Bryan Begley, Neil Wallack, and Michael
7 Skelly.

8 Q. Can you -- we know who Michael Skelly
9 is. Some of the other -- there were people on that
10 board that are not currently on the board; correct?
11 I didn't write down the names.

12 A. No, they're all still on the board.

13 Q. They're all currently on the board.

14 At any time at the board level has the
15 board ever considered discontinuing investment in
16 any of its projects?

17 A. No.

18 Q. At any time has the board considered
19 shifting funds from one project to another?

20 A. Yes.

21 Q. Please explain.

22 A. I think Mr. Blazewicz was here and gave
23 the same answer to that question I would. That's
24 part of every budgeting process. We decide what to

1 prioritize, which projects to prioritize, where our
2 time and resources and financial resources do the
3 most to advance -- advance our company's
4 objectives.

5 Q. So to use your words, you talk about
6 milestones. So have you ever removed -- has money
7 ever been removed from a project's budget because
8 of its lack of meeting milestones?

9 A. I wouldn't say that.

10 Q. Has money ever not been contributed or
11 a budget not expanded on a particular project
12 because milestones had not been met on that
13 project?

14 A. Could you repeat that question, please?

15 Q. Has the decision ever been made at the
16 board level to not fund a budget because of project
17 milestones not being met?

18 A. No. Our board has always funded our
19 budget for the entirety of the company's existence.

20 Q. How often are budgets revised for a
21 certain project?

22 A. Typically once a year.

23 Q. And what is the length of duration of
24 the budget? Are they annual budgets or --

1 A. Yeah, yeah. I think I answered this a
2 moment ago. They're an annual budget, which is
3 what we're actually authorized to go do, and then
4 we provide a longer term forecast to the board for
5 planning purposes.

6 Q. Has the longer term forecast ever been
7 decreased from one meeting to the next because of
8 milestones not being met?

9 A. I don't think it's been decreased.
10 There have been changes in the timing that we
11 deploy our resources based on the timing of meeting
12 milestones.

13 Q. To your knowledge has any of the senior
14 management of Clean Line Energy Partners
15 recommended to the board that a certain project be
16 discontinued?

17 A. No.

18 Q. Am I correct that GBX's Missouri
19 application has been denied?

20 A. And by Missouri application you mean
21 our -- our petition to the Missouri Public Service
22 Commission for a certificate?

23 Q. Correct.

24 A. That's right.

1 Q. Unless there are any other applications
2 that have been denied in Missouri that I'm unaware
3 of.

4 A. Certainly none that have been denied.

5 Q. Is it correct that the three options
6 that the company has given so far as to responding
7 to this denial are appealing, filing a new
8 application, or pursuing federal siting authority?

9 A. Yes.

10 Q. As of today has the company determined
11 which direction it's going to go?

12 A. No.

13 Q. Can you provide a best-case scenario
14 time wise on when GBX believes it can obtain
15 approval for building the line in Missouri?

16 A. If I recall, Mr. Lawlor answered that
17 question and he's probably the expert on it. I'm
18 confident -- I know we have various plans to meet a
19 2019 or 2020 in-service date because we have
20 revisited the schedule. I'm not sure exactly
21 within that time period when we think is the
22 earliest case we could have our Missouri regulatory
23 approval process fully resolved.

24 Q. And it's correct that this portion of

1 the project in Illinois for GBX cannot and will not
2 be built without the Missouri line being built
3 first and approved first; is that right?

4 A. That's true with respect to approved,
5 not with respect to built. We would -- if we have
6 all the approvals, we may well build segments
7 simultaneously in both states.

8 Q. Okay. I guess just to clarify that.
9 So let's envision a scenario where you do not have
10 approval in Missouri yet but you have approval in
11 Illinois. Under that scenario would you start
12 building in Illinois?

13 A. If we don't have the necessary
14 permissions and authorizations to build the project
15 in Missouri, we would not build any of the project
16 in either Missouri or Illinois.

17 Q. Has Bluescape ever expressed any
18 reservations regarding investing their funds
19 because of regulatory problems with the sub-
20 entities?

21 A. No, not reservations. They certainly
22 want to understand exactly where we are and the
23 risks involved and the risks remaining before they
24 invest further. But they very well understand the

1 nature of this highly regulated business. It's
2 their background. And in fact, their belief that
3 they know how to navigate it and understand this is
4 one of the reasons they were drawn to Clean Line.

5 Q. Let's say, for instance, that you can't
6 get approval in Missouri. Do you think Bluescape
7 will still continue to invest in Clean Line Energy
8 Partners?

9 A. Yes. They would be keen to keep
10 supporting our other projects. And in fact, they
11 may well be keen to keep supporting Grain Belt. I
12 mean, at this point in time they are continuing to
13 invest in Grain Belt because they believe that the
14 options that we have to move forward in Missouri
15 are credible options.

16 Q. A similar question. You know, the Rock
17 Island project, the Iowa -- as you testified
18 before, the Iowa approval process has not been
19 completed. Same question. Do you believe that
20 Bluescape would continue investing in Clean Line
21 Energy Partners if you do not obtain approval in
22 Iowa?

23 A. Yes, and the answer's the same. They
24 would continue investing in the other projects in

1 Clean Line, and they are continuing to want to
2 invest in the Rock Island project subject to us
3 finding the right way through our process in Iowa.

4 Q. Since we're talking about Iowa, it's my
5 understanding from your testimony and maybe
6 previous testimony that bifurcation has been sought
7 by Rock Island Clean Line in Iowa; is that correct?

8 A. I don't know that I've ever testified
9 on this matter since I'm not the expert, but I -- I
10 do understand that to be true, that we have sought
11 what you call bifurcation.

12 Q. And do you know what the two things are
13 that are being sought to be bifurcated?

14 A. Yeah. It's consideration of the need
15 for the project and the land acquisition of the
16 project.

17 Q. And what was the Iowa decision on that
18 request?

19 A. It was not granted.

20 Q. And do you know -- was that request
21 made once or twice or how many times?

22 A. I believe we filed and then asked them
23 to reconsider. I don't know whether that was a
24 second request or a motion for reconsideration.

1 Q. And do you know if this decision was
2 reduced to a written order by the state of Iowa,
3 their department of commerce utilities board?

4 A. I know they provided a written
5 response.

6 MR. DAVIS: May I approach the witness,
7 Your Honor?

8 JUDGE VON QUALEN: You may.

9 Q. Can you identify what I just handed
10 you?

11 A. I don't know that I'm familiar with
12 this document. I can read the title of it.

13 Q. Sure.

14 A. It says State of Iowa Department of
15 Commerce Utilities Board, then lists the docket
16 numbers and says Order Denying Motion to Consider
17 Eminent Domain Issue in a Separate Hearing.

18 Q. And is it related to the Rock Island
19 Clean Line LLC?

20 A. It appears to be so.

21 Q. And what's the issue date on this page?

22 A. Again, I'm just reading the document.
23 This is not from my knowledge. It says issued
24 February 13th, 2015.

1 Q. Now, you testified before recalling
2 that an Order had come out regarding bifurcation.
3 Do you recall this occurring around the beginning
4 of -- middle of February this year?

5 A. It sounds about right.

6 MR. DAVIS: Judge, I would ask that the
7 document that I've handed to Mr. Berry, the Order
8 Denying the Motion to Consider Eminent Domain Issue
9 in a Separate Hearing from the State of Iowa be
10 admitted into evidence or, alternatively, that you
11 take administrative notice of this order from the
12 state of Iowa.

13 MR. MacBRIDE: Well, I would ask for
14 what purpose it's offered. We don't object to
15 notice being taken of it for the purpose of
16 documenting that the Iowa Utilities Board on
17 February 13th denied Rock Island's Motion to
18 Consider Eminent Domain Issue in a Separate
19 Hearing. And in fact, a number of our witnesses
20 have testified that that occurred.

21 If it's being offered for the truth of
22 the matter contained therein, I would object to it.
23 But I wouldn't object to it just for the purpose of
24 documenting the fact that that denial occurred on

1 that date.

2 MR. DAVIS: May I respond?

3 JUDGE VON QUALEN: You may.

4 MR. DAVIS: I'm not sure if I'm exactly
5 saying what Mr. MacBride has said. But if there's
6 an agreement to take administrative notice of this
7 order, I'm certainly fine with that.

8 JUDGE VON QUALEN: I believe what he
9 said was, yes, take administrative notice but not
10 for the truth of the matters asserted within the
11 order.

12 MR. DAVIS: I would be fine with that.
13 I would withdraw asking that it be admitted into
14 evidence. If I decide to cross-examine him more on
15 the substance of this and I would, you know, like
16 it admitted for those purposes, then I'll restate
17 my motion. But I would just ask that
18 administrative notice be taken.

19 JUDGE VON QUALEN: And I understand the
20 company does not object to that.

21 MR. MacBRIDE: Right, not -- not to
22 take administrative notice for the purpose of
23 establishing that the Rock Island Clean Line LLC's
24 request was denied by the Iowa Utilities Board on

1 February 13th, 2015.

2 JUDGE VON QUALEN: The motion's
3 granted.

4 Q. (by Mr. Davis) This may be kind of a
5 funny question, but with Rock Island Clean Line,
6 you want to get that line built in Iowa; right?

7 A. Yes.

8 Q. And it sounds like from other testimony
9 that Clean Line Energy Partners was a little
10 surprised with the result that came out related to
11 the request for bifurcation. Is that correct?

12 A. We were certainly disappointed. I
13 don't know that we were surprised. We thought we
14 had a good case. We thought we were likely to win.
15 But we've all been doing this long enough to know
16 that sometimes there are twists and turns in
17 regulatory processes, and you receive them and
18 figure out a way forward.

19 Q. So did this denial delay your
20 milestones for this project?

21 A. Yes.

22 Q. How so?

23 A. Well, we had hoped to be able to
24 proceed in our Iowa proceeding to get franchised in

1 a more expeditious fashion, and the fact that the
2 board did not agree to bifurcate meant that we had
3 to go do additional land acquisition to proceed
4 with the franchise, which resulted in a delay.

5 Q. How long do you think it will take in
6 Iowa to obtain approval?

7 A. I have no specific opinion.

8 Q. Do you have a best-case scenario?

9 A. I don't. I'm not in charge of managing
10 this project, nor am I steeped in this proceeding.

11 Q. A similar question for GBX in Missouri.
12 Did the issuance of the denial order delay the
13 milestones that have been set by Clean Line Energy
14 Partners for the GBX project?

15 A. It delayed that particular milestone,
16 which is obtaining the state regulatory approval in
17 Missouri. With respect to the other milestones, we
18 are still full speed ahead on this process, on the
19 interconnection processes and on the other
20 milestones for the project because we believe
21 there's a path forward to remedy the situation in
22 Missouri.

23 Q. It would certainly delay your
24 anticipated date for construction; right?

1 A. Somewhat, yes.

2 Q. Let's talk first about Missouri. So is
3 it the company's position to push quickly and try
4 to get this figured out in Missouri and try to get
5 things right or what's -- what's the -- is this a
6 full-court press, we're starting right away to get
7 it fixed, are you waiting a year, or what's
8 happening in Missouri?

9 A. In what we do there's no such thing as
10 really fast because it takes time to do this right,
11 it takes time to do the work you need to do to get
12 an approval. But we're certainly working every day
13 on what our options are in Missouri, on how we can
14 get the Commission what it needs to find a
15 different decision, and on what other ways we may
16 have to proceed in the project. There's no delay
17 in that. We just haven't made a final decision yet
18 because we're still learning about those
19 alternatives.

20 Q. Same question for Iowa.

21 A. I'd say it's the same situation. I
22 mean, we have people devoted to that project whose
23 job it is to figure out how to move forward in
24 Iowa.

1 Q. Is it fair to say with both states that
2 you would like to get the line built as quickly as
3 you can so you're moving as reasonably quick as you
4 can in order to meet your milestones?

5 A. Yes. I mean, we want to get it built
6 as soon as we can because -- well, that's what we
7 do. But I would also say we're not rushing things,
8 because it takes time to work through these
9 processes. I mean, we don't want speed to come at
10 the expense of doing things the right way.

11 Q. My understanding in Iowa is that part
12 of the issue relates to the acquisition by Rock
13 Island Clean Line of right-of-ways and easements
14 and things of that nature; is that right?

15 A. Yes.

16 Q. So what's -- what needs to happen?
17 Does the company need to work to acquire a lot more
18 easements and right-of-ways or what's -- what's
19 supposed to happen there?

20 A. Sorry, I don't quite understand the
21 context for the question. If you could -- if you
22 could restate it.

23 Q. Sure. You stated that part of the
24 problem in Iowa is -- or, one of the issues, I

1 guess, is the need to obtain more easements and
2 right-of-ways; correct?

3 A. That need is related to our situation
4 in the Iowa Utilities Board.

5 Q. Okay. What is Rock Island Clean Line
6 or Clean Line Energy Partners doing in response to
7 that need?

8 A. So two things. One, we have acquired I
9 don't know how many millions but millions of
10 dollars worth of easements in that state. And two,
11 we are seeing if there's a way to move forward -- a
12 different way to move forward with the utilities
13 board.

14 Q. Is it correct in Iowa that the more of
15 these easements and right-of-ways that the company
16 obtains the better it is for your case, the quicker
17 things may go? Do you have any idea?

18 A. I really can't answer specific
19 questions about the likelihood of the Iowa
20 Utilities Board doing something. I'm not close
21 enough to that situation to venture an opinion.

22 Q. But you would be familiar with the
23 project from an overall management and budgeting
24 perspective, things like that; is that correct?

1 A. Yes.

2 MR. DAVIS: I appreciate your time. No

3 further questions.

4 JUDGE VON QUALEN: It's 12:10. I think

5 it would be appropriate to take a lunch break now.

6 Let's reconvene at 1:15.

7 (A recess was taken from

8 12:10 p.m. until 1:15 p.m.)

9 JUDGE VON QUALEN: Back on the record.

10 Do we have additional cross-examination

11 for Mr. Berry?

12 MR. NEILAN: Yes, Your Honor.

13 CROSS-EXAMINATION

14 QUESTIONS BY MR. NEILAN:

15 Q. Good afternoon, Mr. Berry.

16 A. Good afternoon.

17 Q. My name is Paul Neilan. I'm the

18 attorney for Mary Ellen Zotos. She's one of the

19 landowners whose property may be traversed if the

20 GBX line is approved and constructed as approved.

21 First a question, are you an attorney?

22 A. No.

23 Q. Do you have any law background?

24 A. No, I do not.

1 Q. Nothing like one or two years in law
2 school and then did something else?

3 A. No.

4 Q. Would you be so kind as to turn in your
5 direct testimony to lines 55 to 57? And here I
6 just want to make sure my understanding is correct.
7 You say "The specific users of the line, not
8 ratepayers at large, will pay for the cost of the
9 project through capacity reservation fees." That
10 is correct?

11 A. Correct.

12 Q. And then would you be so good as to
13 turn to in the direct testimony lines 247 to 249?
14 This is substantially to the same effect. Here
15 it's expressed as the GBX line. The project does
16 not impose any costs on ratepayers because it will
17 be paid for by specific users of line. Is that
18 correct?

19 A. Yes.

20 Q. If you would please turn to lines 912
21 to 918 in your direct.

22 And just before looking at this,
23 there's an acronym PVRR. Would you be so good as
24 to explain what PVRR stands for?

1 A. PVRR is the present value of revenue
2 requirement.

3 Q. Thank you. And your emphasis in this
4 section of your testimony is that the PVRR is of a
5 sufficient level or sufficient magnitude that your
6 forecasted market revenues are more than sufficient
7 to cover the project's capital, operating, and
8 financing costs without any additional costs to
9 ratepayers; is that correct?

10 A. To clarify, the model that I used --
11 and it's following the model that Staff economist
12 Mr. Zuraski used in the Rock Island case. It looks
13 at the market -- the projected market revenues and
14 then determines if there is any additional amount
15 that would need to be recovered through, for
16 example, the price of renewable energy credits.
17 And what I found is that the present value of
18 revenue requirements was in fact negative, which
19 suggests that the wholesale electric market
20 revenues are sufficient in and of themselves
21 without any additional compensation for renewable
22 energy credits.

23 Q. Okay. So the answer to the question --
24 that's an explanation. Thank you. But the answer

1 to the question as to whether the PVRR is of such a
2 magnitude as to cover all of those costs, that's
3 yes?

4 A. Well, I -- it's not a yes or no answer
5 because the way you phrased it didn't reflect what
6 was done in my testimony.

7 Q. Well, I'm not phrasing it and I'm
8 taking it verbatim out of your testimony. Because
9 at lines 916 to line 917 on the top of page 45 of
10 your testimony "This demonstrates ..." this being
11 your PVRR calculation. That's the subject of that
12 relative pronoun; is that correct?

13 A. Yes.

14 Q. "This demonstrates that forecasted
15 market revenues are more than sufficient to cover
16 the capital, operating and financing costs of the
17 Project and its connected wind generation without
18 any additional costs to ratepayers." That's what
19 you've concluded?

20 A. That's the conclusion of the PVRR
21 analysis, yes.

22 Q. And that's so the answer to the
23 question is yes?

24 MR. MacBRIDE: To which question?

1 MR. NEILAN: To the question I
2 originally asked.

3 Q. Which is that your PVRR is -- the way
4 you've calculated PVRR, you've determined that it
5 was of such a value that this project is going to
6 generate sufficient revenues to cover all of your
7 capital -- I'm reading right from your words, not
8 mine, on 917, to cover the capital, operating, and
9 financing costs of the project without any
10 additional costs to ratepayers.

11 A. To be clear, it's the market revenues
12 that cover those costs. It's not the revenue
13 requirements themselves.

14 Q. Okay. So when you refer to PVRR on
15 line 913, are you referring to PVRR or are you
16 referring to market revenues?

17 A. I'm referring to PVRR.

18 Q. Okay. So what you're saying in this --
19 and let me make sure I understand this. On line
20 916 when you say "this demonstrates," what you're
21 saying is market revenues are sufficient to cover
22 all of the capital, operating, and financing costs
23 of the project without any additional costs to
24 ratepayers?

1 A. The way this model works, the fact that
2 the PVRR is negative, which is what's described in
3 the preceding sentence and is the object of "this,"
4 that fact demonstrates that the market revenues are
5 more than sufficient to cover the various costs of
6 the project.

7 Q. I don't really care -- my question does
8 not relate to how the PVRR works and I really don't
9 care and nor do the landowners care. What I want
10 to do is get to the point of your conclusion that
11 you're predicting this project is going to operate
12 at such a level as to pay off all of your capital,
13 operating, and financing costs without any
14 additional costs to the ratepayers. Is that what
15 your model showed? Because this is your
16 conclusion. In plain English, I'm trying to
17 understand what you're saying.

18 MR. MacBRIDE: Objection. I can't even
19 understand that question.

20 MR. NEILAN: Okay. I'll say it again.

21 Q. At lines 916 to 918 you referred to
22 "this," which is obviously a set of calculations
23 you've made, either market revenues or PVRR or what
24 have you. But basically what you're saying is this

1 project is going to throw off enough money to pay
2 capital, operating, and financing costs without any
3 additional costs to ratepayers. Is that your
4 conclusion?

5 MR. MacBRIDE: Objection.

6 Q. Do I understand correctly?

7 MR. MacBRIDE: Objection. That's both
8 a mischaracterization of the written testimony and
9 at least two prior answers.

10 MR. NEILAN: Well, I'm --

11 MR. MacBRIDE: May I suggest Mr. Neilan
12 either understand what this testimony says, get
13 some help, or move on.

14 MR. NEILAN: No, I'm asking him --

15 MR. MacBRIDE: The witness has
16 explained twice exactly what he did.

17 MR. NEILAN: I didn't ask what the
18 witness did. I asked how the witness -- I asked
19 whether the witness is reaching this conclusion
20 that there will be no additional costs to
21 ratepayers.

22 This is like the other day when we had
23 witness Skelly and McDermott going on in these
24 dissertations on what their models prove or don't

1 prove.

2 Q. My question is pretty direct and
3 basically is, is your conclusion that this project
4 is going to throw off enough revenues to cover your
5 capital, operating, and financing costs without any
6 additional costs to ratepayers? That's what it
7 says in plain English to me.

8 MR. MacBRIDE: No. Objection, it does
9 not. I do not see the words throw off enough --

10 JUDGE VON QUALEN: Slow down. It's
11 getting a little bit argumentative here.

12 You may ask the question, but stay
13 civil.

14 MR. NEILAN: I'm -- I shall, Your
15 Honor. Thank you.

16 Q. On line 916 when you referred to
17 "this," would you please explain what "this" refers
18 to?

19 A. It refers to the prior sentence, "...
20 the average PVRR of the project is always negative
21 across all assumptions about discount rate and LMP
22 savings."

23 Q. Okay. And that average PVRR then
24 demonstrates that this project will throw off

1 enough revenues to cover capital, operating, and
2 financing costs without any additional costs to
3 ratepayers. Yes or no?

4 A. Well, it's not a yes or no answer. It
5 -- this analysis demonstrates that the connected
6 wind generation can sell power into the market and
7 earn enough revenues from the wholesale power
8 market to cover the cost of that generation and the
9 costs of transmission without any additional costs
10 for RECs or additional subsidies or rate recovery.

11 Q. So the answer to my question then is
12 yes; is that correct?

13 MR. MacBRIDE: Objection. His answer
14 is what it -- he's answered this question how many
15 times. He's explained what the analysis shows.

16 MR. NEILAN: We're getting into this
17 indirectness which is so far --

18 JUDGE VON QUALEN: Mr. Berry, can you
19 not give a yes or no answer to that question?

20 A. In the context of what does my analysis
21 show at this point, I think it's appropriate to
22 characterize it in the way I did. If -- if --
23 well, I'll leave it at that.

24 Q. (by Mr. Neilan) All right. We'll move

1 on. Since obviously we're not going to get a clear
2 answer on that, let's move to your next item.

3 Would you be so kind to turn to lines
4 1158 to 1160 in your direct testimony. There you
5 say that "Grain Belt Express is a merchant project
6 because it ..." i.e. Grain Belt Express "... is
7 assuming the market risk of the Project and does
8 not have a process to recover its costs from
9 ratepayers, and therefore must sell capacity
10 through negotiated contracts." That restates that
11 accurately; is that correct?

12 A. It does.

13 Q. I want to focus for a minute on that
14 conjunctive clause "and does not have a process to
15 recover its costs from ratepayers." By that do you
16 mean that GBX itself does not have a right to
17 recover these costs from ratepayers?

18 A. Yes.

19 Q. Okay. So you're not saying -- by this
20 you don't mean to say that there is no such process
21 that GBX could avail itself of; is that correct?

22 A. I do mean to say that, that Grain Belt
23 does not have a process to recover its costs from
24 ratepayers. It recovers its costs through selling

1 capacity to specific shippers.

2 Q. That Grain Belt itself does not have a
3 process. Do I understand correctly?

4 A. Yes.

5 Q. Okay. But there are other processes,
6 for example from regional transmission
7 organizations, that would be available to it; is
8 that a fair statement?

9 A. Not to Grain Belt Express because it is
10 a merchant project. Potentially to other
11 transmission providers.

12 Q. If you would be so good as to turn to
13 lines 1163 to 116 -- oh, I'm sorry, wrong reference
14 -- to lines 1481 to 1484.

15 A. This is of my direct testimony?

16 Q. Direct testimony.

17 A. Okay.

18 Q. And your model -- you're describing
19 your merchant model as a shipper pays merchant
20 model. So once again you state that none of its
21 costs will be recovered through the cost allocation
22 process of MISO and PJM; is that correct?

23 A. Yes.

24 Q. Now, just a moment ago, just to clarify

1 what you said earlier, you said that there was not
2 available to GBX any such process because it was a
3 merchant organization. That's not -- you're saying
4 it's not available to it?

5 A. That's correct.

6 Q. Does that mean that GBX is making a
7 commitment not to seek cost allocation through an
8 RTO process with PJM or MISO?

9 A. Yeah. We've proposed a condition in
10 the next page or so of my testimony which would
11 state that we are -- we're not going to do that and
12 we have no plans to do that. But if we did ever
13 change our business model, we would come back to
14 this Commission and ask for the permission to
15 proceed with that different business model.

16 Q. All right. So if I understand
17 correctly, your earlier statement then that there's
18 no process available to GBX isn't a hundred percent
19 accurate then, because this process would be
20 available if you met the condition that you just
21 referred to. Is that not correct?

22 A. No, it's not correct.

23 Q. If I understand correctly, you said
24 that you would place a condition into your

1 documents with the ICC that appears on line 1497 to
2 1503; right?

3 A. That's correct.

4 Q. And if that condition is met, then
5 would you not be availing yourself of a process at
6 an RTO like PJM or MISO?

7 A. Yes. We don't believe there is any
8 such process today or that we could proceed with
9 cost allocation. The reason we've proposed this
10 condition is that if those were to change and if
11 the RTOs showed an interest in doing a regional
12 cost allocation for low cost renewables, we think
13 it would be appropriate to have this project
14 considered for that and -- but we recognize that
15 the Commission would be approving this project
16 based on its unit current business model, so we
17 would come back and seek approval to change it.
18 None of that could happen today, nor are we
19 pursuing it today, nor do we have any plans to
20 pursue it.

21 MR. NEILAN: Your Honor, my question
22 was not whether they plan to pursue it nor other
23 aspects that Mr. Berry has elaborated on which go
24 far outside the question that I asked. My question

1 was, is there a process available? And he's saying
2 that he's -- because he's not going to do it today,
3 it doesn't exist, which doesn't make any sense.

4 JUDGE VON QUALEN: Why don't you ask
5 him if that's what he's saying.

6 Q. Well, Mr. Berry, is that correct?
7 Because you choose not to do it today, it doesn't
8 exist, period?

9 A. I don't think that's logically correct
10 but -- and it's also not what I -- the way I
11 answered your prior question.

12 Q. Correct, it's not the way you answered
13 my prior question because, unfortunately, you
14 didn't answer my prior question.

15 MR. MacBRIDE: Objection.

16 JUDGE VON QUALEN: Mr. Neilan, slow
17 down, ask one question at a time, make the
18 questions clear, and do not be argumentative.

19 MR. NEILAN: Thank you, Your Honor.

20 Q. Would you agree it's more likely that
21 GBX will seek cost allocation if it's either not
22 meeting its revenue targets or in danger of not
23 meeting its revenue targets than if the opposite is
24 true, if you're meeting all of your targets and

1 doing fine financially result wise?

2 A. I don't see that that would have an
3 influence either way.

4 Q. What would be the -- what would be the
5 factor that would make you go back and seek cost
6 allocation?

7 A. Well, as I explained, there is no
8 process today to allocate the costs in any regional
9 tariff, whether MISO or PJM or another, for an
10 interregional project that is HVDC and covers three
11 different RTOs and has as its goal to bring in the
12 lowest cost renewable energy. So if there were to
13 become -- if such a process were to come into
14 existence, we would consider pursuing it, and we
15 would look at would we be able to qualify and would
16 we be able to convince the Illinois Commission and
17 other necessary folks that our project is
18 beneficial under these -- these processes.

19 MR. NEILAN: Your Honor, at this point
20 Intervenor Zotos would ask that an exhibit marked
21 as Zotos Cross Exhibit 2 be entered into evidence.
22 It is a comment letter dated on or about September
23 5th, 2012, from Clean Line Energy to PJM. And with
24 the Court's permission, I would give a copy to

1 counsel and to the witness and to the Court, if
2 that's agreeable.

3 JUDGE VON QUALEN: You may mark it and
4 give it to counsel, the witness, and myself.

5 Q. So the question, Mr. Berry, do you
6 recognize this document?

7 A. I do not recognize this document. No,
8 I don't.

9 Q. Just based on your earlier testimony in
10 relation to questions that Mr. Shay asked you, you
11 interact directly with the board at Clean Line and
12 senior executive -- the senior executive team at
13 Clean Line and I assume all of the different
14 project LLCs; is that correct?

15 A. Yes. The project LLCs themselves don't
16 have management teams, but I interact with the
17 management team and the board.

18 Q. In how they are managed, you would be
19 involved in that in some respect?

20 A. Yes.

21 Q. Are you familiar with the event that's
22 referred to in the first paragraph between lines 3
23 and 4 in this letter, a discussion among the PJM
24 transmission owners cost allocation proposal as

1 discussed at a public meeting on July 18, 2012?

2 A. I'm not aware of the specific cost
3 allocation proposal discussed in that meeting a
4 little over three years ago. I didn't attend it.

5 Q. In the second paragraph, about the
6 fourth line, if you're there, there's a sentence
7 that -- actually a little above that, the second
8 line, towards the end, the sentence beginning
9 "Accordingly, neither ..." it says "Accordingly,
10 neither Rock Island nor Grain Belt currently
11 anticipates recovery of any costs through PJM's
12 cost allocation mechanisms. That said, however,
13 based upon the substantial benefits that would
14 accrue to PJM customers through transmittal ..."
15 and there's a referral to the Rock Island and Grain
16 Belt projects "... of high-quality renewable
17 resources from the Midwest ISO and SPP regions,
18 under the appropriate circumstances, either or both
19 of the projects may qualify for, and seek
20 allocation to some degree."

21 Is that correct? That's what it says.

22 MR. MacBRIDE: Wait. Objection. I
23 object to cross-examining the witness on this
24 document he neither recognizes nor is responsible

1 for the document, nor as he testified was involved
2 in the events that appear to have resulted in this
3 document.

4 MR. NEILAN: Well, Your Honor, I think
5 we're on the last day of the trial here, and Mr.
6 Berry, with all due respect, is the default
7 witness. Every other witness when they're
8 confronted with a question they can't answer, the
9 default is, well, Mr. Berry can answer that, and so
10 they defer to him.

11 What we have is a document which is
12 available on the PJM website and it's a comment on
13 Clean Line's letterhead. It's not signed, but it
14 is available on their website. So it's publicly
15 available. It in my view goes to the credibility
16 of Clean Line's claim that it's not interested in
17 going for cost allocation through the RTO. I think
18 it's relevant to the inquiry of this. It's -- the
19 availability of PJM I think goes towards its --
20 proves its authenticity and I think it's -- I think
21 it's relevant and should be admitted.

22 MR. MacBRIDE: Judge, I don't recall
23 Mr. Neilan asking any of my prior witnesses about
24 this document. So the claim that he could only ask

1 Mr. Berry about it or defer to him, you know, is
2 not accurate.

3 JUDGE VON QUALEN: Mr. Neilan, you may
4 ask Mr. Berry if he's familiar with any of the
5 proposals or ideas that are set forth in this
6 letter.

7 MR. NEILAN: Uh-huh. Okay.

8 Q. Mr. Berry, would you look at the third
9 paragraph, first sentence of this document. It
10 says "Unfortunately, the PJM TO ..." which, though
11 not defined, I assume means transmission
12 organization "... does not adequately address cost
13 allocation ..." and then reading on "... or HVDC
14 projects like those being developed by Clean Line."

15 Is that statement consistent with how
16 you would currently view the PJM cost allocation
17 process?

18 A. Yes. There is no such process for a
19 HVDC project like ours.

20 Q. Okay. Looking again at your direct
21 testimony in lines 1485 to 1491, is it correct that
22 the gist of this testimony, this commitment that
23 you're talking about -- would you like to read
24 through it for a moment and refresh your

1 recollection or are you familiar?

2 A. I'm familiar with it.

3 Q. So is the gist of this testimony and
4 the language that's in the block quotes that Grain
5 Belt Express is not going to seek RTO cost
6 allocation without coming back first to the
7 Illinois Commerce Commission? Is that correct?

8 A. Well, I'd say I couldn't answer that
9 universally without any regard to the context. I
10 think the condition is clear that before we'd
11 actually recover any costs we would definitely seek
12 the permission of this Commission. It may be that
13 if there is some new cost allocation process at
14 MISO or PJM we advance somewhat in that process so
15 that we then could come to the Commission with a
16 clear picture of what it would look like. It would
17 be hard for the Commission to act without that
18 picture. So I guess it -- it would depend on the
19 context. I couldn't say universally.

20 MR. NEILAN: Your Honor, I didn't ask
21 for a description of every circumstance in which
22 they might possibly go back and seek cost
23 allocation. What I asked was, would they go back
24 and seek permission of the Illinois Commerce

1 Commission before seeking it? I didn't ask for an
2 extended discussion of what the situation might be
3 internally at Grain Belt Express.

4 JUDGE VON QUALEN: I believe he did
5 answer your question. He may have added some
6 editorial comment, but I believe your question was
7 answered.

8 Q. Then the answer is yes?

9 A. I need you to repeat the question.

10 Q. Let's focus really on this language in
11 the block quotes from 1497 to 1503. Is the gist of
12 that a commitment by Grain Belt Express not to seek
13 RTO cost allocation unless it first gets Commission
14 -- ICC approval to do so?

15 A. Well, I think the condition is clear,
16 and it refers to actually recovering the cost. So
17 as I mentioned, there is a circumstance where -- I
18 don't know what the word "seeking" means exactly.
19 But we could take some steps in that process, that
20 theoretical process which doesn't exist today,
21 before we came back to the Commission.

22 Q. Okay. So what you're saying is prior
23 to recovering any project costs you'll get the
24 Illinois Commerce Commission's permission?

1 A. That's correct.

2 Q. So that would mean that you could
3 commence a proceeding or some sort of process with
4 the RTO, have that completed, and then come back to
5 the Commission and say this is what we've got and
6 we're back for your permission. Because what
7 you've said here is prior to recovering any project
8 costs from Illinois retail ratepayers.

9 A. Again, this process doesn't exist, so
10 I'd be speculating, but I would say that's not --
11 that's not precluded by the Commission -- by this
12 condition.

13 MR. NEILAN: Let me ask this question a
14 different way. And it doesn't call for
15 speculation, Your Honor, because I'm asking him the
16 meaning of the words in his own testimony. These
17 are words which Grain Belt Express itself is
18 putting in there.

19 JUDGE VON QUALEN: Just ask the
20 question.

21 MR. NEILAN: Well, I'm trying. And
22 incidentally, my estimate of cross-examination time
23 is based on an ordinary cross-examination time, not
24 for answers such as these.

1 MR. MacBRIDE: Well, I object to
2 Counsel's characterization. We assumed his
3 estimate was based on competent understanding of
4 the materials and the ability to ask questions of
5 the witness.

6 JUDGE VON QUALEN: That's enough.
7 Please question, answer, question, answer.

8 Please listen to the questions
9 carefully. If you don't understand the question,
10 stop him and ask a question about it.

11 THE WITNESS: Yes, Judge.

12 Q. Would you please read along with me at
13 lines 1497 to 1499? Just those three lines. I'm
14 going to read them out loud.

15 "Prior to recovering any Project costs
16 from Illinois retail ratepayers through PJM or MISO
17 regional cost allocation, Grain Belt Express will
18 obtain the permission of the Illinois Commerce
19 Commission in a new proceeding ..." It says "...
20 initiated by Grain Belt Express." But we can just
21 stop with "a new proceeding ..."

22 So I don't see anything speculative in
23 there and I'm asking you whether by prior to
24 recovering is it Grain Belt Express's plan to go

1 first to the ICC and get its permission before
2 seeking RTO cost allocation or will you go to the
3 RTO first, then complete that, then come back to
4 the ICC? Because what you've said here is prior to
5 recovering --

6 JUDGE VON QUALEN: Stop. The question
7 is pending.

8 A. We don't have a plan one way or the
9 other about that sequence of events.

10 Q. So you could do the latter, in other
11 words?

12 A. If it's not foreclosed by the
13 conditions, yes.

14 Q. So that answer is yes; correct?

15 MR. MacBRIDE: I think he just answered
16 that question, Judge.

17 Q. Is that a yes?

18 MR. MacBRIDE: He said yes.

19 MR. NEILAN: He didn't say yes. He
20 said that's -- if you read it back, he did not say
21 yes. I'm asking for a yes or no answer on
22 virtually all of these.

23 Q. Let's assume that you have gone back to
24 the ICC, again prior to recovering costs through an

1 RTO allocation process, and just as you've stated
2 at lines 14 -- 1498 and 1499, you are now seeking
3 the permission of the Illinois Commerce Commission.
4 Are you with me so far? The situation is -- it's a
5 hypothetical situation, but it expresses what's in
6 your own words. So you're at a situation where
7 you've decided to go for cost allocation through an
8 RTO and now you have gone before the Illinois
9 Commerce Commission to seek their permission as
10 you've stated on lines 1498 to 1499. Have you or
11 the management of Grain Belt Express considered
12 what your next steps are if the Commission says no?

13 A. No, we haven't.

14 Q. Would you agree that other parties
15 might also bring you before PJM or ICC, not
16 necessarily voluntarily, for cost allocation if,
17 for example, there's some transmission improvement
18 that would involve Grain Belt Express's line once
19 it's up and running?

20 A. I don't see how that could work.

21 Q. Well, let's assume that the PJ -- the
22 GBX line is running through some utility territory
23 and that utility is a member of PJM and they
24 perceive that there's some transmission issue,

1 whether it's congestion or a liability or what have
2 you, and that GBX could be or should be involved in
3 remedying that situation simply because of the
4 amount of power or where you're located, the
5 features of the line. Is that clear?

6 A. I think I'm following the situation you
7 describe.

8 Q. Okay. So would you agree that they
9 could involve you in some PJM process for network
10 upgrades or some other PJM process to remedy
11 whatever problems might be there?

12 A. Well, first off, I think if the project
13 already exists, it would already be remedying the
14 problems that are in this hypothetical.

15 And second, I'm not aware of any
16 process where someone besides the owner of the
17 transmission assets could go to PJM and sort of
18 force some sort of caustic allocation on the owner
19 of the transmission asset.

20 Q. So at some point Grain Belt Express can
21 change its plans. You don't currently have any
22 plans to go for cost allocation, but you could
23 change those plans and go for cost allocation. Is
24 that a correct understanding?

1 A. Subject to complying with this
2 condition, yes.

3 Q. So that would mean that instead of a
4 merchant model that you've talked about under which
5 GBX assumes all risk, all market risk of this
6 project succeeding or failing, you could make a
7 choice to go back for cost allocation in which some
8 portion of that risk is going to be allocated in
9 some fashion to Illinois ratepayers?

10 A. Again, subject to compliance with this
11 condition, we could do that, but we have no plans
12 to.

13 Q. Thank you. If you would be so good as
14 to turn in your rebuttal testimony to lines 430 to
15 436. It's correct that in this paragraph in those
16 lines from 430 to 436 you're comparing the
17 situation of Grain Belt Express with Grand Prairie
18 Gateway, which was Docket 13-0657; is that correct?

19 A. I'm discussing an issue in that case
20 that is relevant to Grain Belt, yes.

21 Q. And in particular, you're referring to
22 a statement by the ICC that said one of the factors
23 in approving this project was that it may introduce
24 new efficiencies into the market; is that correct?

1 A. Yes.

2 Q. And do you know whether Grand Prairie
3 Gateway was considered and approved through PJM's
4 regional transmission enhancement process, RTEP?

5 A. It was.

6 Q. It was approved, thank you.

7 Do you know whether the Grand Prairie
8 Gateway project had anything to do with relief of
9 congestion in PJM?

10 A. That was not the primary origination --
11 or, the basis on which the PJM RTO approved the
12 project.

13 Q. But it had something to do with
14 congestion. It was one of the factors. You would
15 agree?

16 A. It wasn't the basis for their approval.
17 It was a benefit that ComEd asserted in their case.

18 Q. All right. You agree with me that the
19 Illinois Renewable Portfolio Standard can be
20 satisfied by renewable energy credits or
21 alternative compliance payments without the need to
22 physically deliver energy into PJM or Illinois?

23 A. Yes.

24 Q. Thank you. In your rebuttal testimony

1 would you be so kind as to refer to line 215. And
2 there you say that the renewable energy credit
3 market is regional. And that's a statement that
4 you make again at lines 362 and 363, and a few
5 other places in your testimony you refer to the
6 renewable energy credit market as regional. Is
7 that correct?

8 A. Yes.

9 Q. How many contracts to sell renewable
10 energy credits have you been involved in or have
11 closed?

12 A. At least half a dozen. I don't know
13 specifically.

14 Q. Okay. Would you also kindly refer to
15 your Exhibit 11.3? Do you have that in front of
16 you?

17 A. I do.

18 Q. So as I understand this, this is a
19 table that basically calculates what you believe to
20 be the demand for renewable energy credits in PJM
21 and MISO; is that correct?

22 A. Yes.

23 Q. And that's based on Energy Information
24 Agency data and the RPS requirements, which I

1 assume are percentages? Is that a fair statement?

2 A. Yes.

3 Q. And you would agree that if one of
4 these states or one or more of these states had
5 conditions on them that required the generating
6 resource to be in a particular location and Kansas
7 didn't qualify that would change your results?

8 A. Not for this calculation.

9 Q. Why is that?

10 A. Because I'm estimating the regional
11 demand and because that regional demand is not
12 limited to a particular source, such as Grain Belt
13 or a wind farm in Illinois. I'm looking at the
14 overall size of the market.

15 Q. Are you referring -- when you say the
16 regional market, are you referring to a market that
17 is mandatory, say based on Renewable Portfolio
18 Standards as they may exist in different states?

19 A. Primarily. Though there is some
20 voluntary component to the market as well.

21 Q. But the percent -- let me ask again.
22 The percentages that you have here, though, are
23 these based on the RPS percentages in the state or
24 are they based on something else?

1 A. The RPS percentages.

2 Q. They are based -- so that would be the
3 first case I mentioned; is that correct? They
4 would be based on something of a mandatory market.
5 Somebody is required to come up with a certain
6 volume of RECs?

7 A. I'm sorry. I don't understand the
8 question.

9 Q. Okay. In order to comply with the RPS
10 in a given state there may be a percentage. So
11 let's assume that you've got a load-serving entity
12 that is subject to the RPS. They have to come up
13 with some volume -- you would agree they have to
14 come up with a certain volume of RECs under these
15 percentages.

16 A. Usually RECs are the way to demonstrate
17 compliance. There are certain states where there
18 are other ways to demonstrate compliance as well.

19 Q. Okay. Let's assume for the moment that
20 we're only talking about the purchases of RECs as
21 opposed to a load-serving entity that may have its
22 own wind farms or solar generation facilities and
23 can generate its own RECs, just to make the example
24 easier. If one of these states had a requirement

1 that the generating resource had to be located in
2 PJM, would that change -- would that not change the
3 results of your calculations in this table?

4 A. No.

5 Q. Let me make sure I understand that.

6 Let's break this down. A given state, we'll call
7 it state A, has a ten percent RPS and they've got a
8 requirement that in order to be eligible to satisfy
9 the state RPS the renewable energy source has to be
10 located in PJM. Are you with me so far?

11 A. I am.

12 Q. Okay. If the renewable energy resource
13 that generates the RECs has to be located in PJM,
14 how is it that resources located in west Kansas in
15 what GBX has referred to as the resource area would
16 qualify to meet that particular RPS we just
17 described?

18 A. Well, you have to look at the specifics
19 of the RPS, but one possible way is that, as I
20 believe we stated in testimony, we would turn
21 functional control of this project over to PJM and
22 it would become part of the grid that PJM operates.
23 But again, it would depend on the specific way in
24 the statute that -- that located in PJM -- how

1 that's fleshed out in the statute.

2 Q. Okay. Thank you. Can I refine that a
3 little bit? Let's assume for the moment that the
4 way it's fleshed out in the statute is exactly as
5 I've described it to you, that it's ten percent and
6 the renewable generating resource must be located
7 within the PJM footprint. That's the only two
8 requirements. If that's the case in any particular
9 state, would that not change the result of your
10 calculations say for that state and of course for
11 the aggregate resulting company?

12 A. No. This is an overall regional
13 calculation without specific regard to which states
14 or which amounts Grain Belt Express could meet.

15 Q. Just to make sure I understand, 11.3 --
16 you offered 11.3 exhibit into evidence to give a
17 picture of what the demand is because GBX's
18 position is that this line is market driven and
19 that there is a demand there. So you are looking
20 at different states in here. I see a dozen, maybe
21 more, states. So I'm not sure if I understand your
22 response.

23 A. Is there a question pending?

24 Q. Well, I'm wondering how it would be if

1 one of these states -- if -- if GBX's customers --
2 transmission customers in west Kansas were not
3 eligible -- the RECs generated by those customers
4 were not eligible to satisfy the RPS let's say in
5 Pennsylvania, what you're saying is that would not
6 change the results for demand as you've calculated
7 it here. Is that correct? You're saying it would
8 not change the results?

9 A. Well, I performed two separate
10 calculations in my testimony. Exhibit 11.3 is the
11 overall demand. And then in response to points --
12 this concern raised in your witness's testimony, I
13 performed an additional analysis in Exhibit 11.14
14 which examined the portions of the RPS that energy
15 delivered by Grain Belt Express would be eligible
16 to meet.

17 JUDGE VON QUALEN: Mr. Berry, are you
18 saying that 11.14 factors in any geographical
19 requirements for RPS?

20 A. That's correct.

21 Q. And were any states eliminated in --
22 when you figured in this geographical requirement,
23 were any states eliminated from 11 -- that were in
24 Exhibit 11.3 that are no longer in Exhibit 11.14?

1 I'm looking and I don't see a difference.

2 JUDGE VON QUALEN: Page 5 of 5.

3 A. Yes. Some states were altogether
4 eliminated.

5 Q. And are those states listed in Exhibit
6 11.14?

7 A. Yes. They're the states with a zero
8 next to them in the table.

9 Q. Okay. And that exhibit reflects
10 geographical requirements as you've determined they
11 apply; is that correct?

12 A. Yes.

13 Q. Is there any other party that you're
14 aware of that's competing to build a high voltage
15 DC line between resource rich areas like Kansas and
16 areas east, whether it's PJM or another?

17 A. I'd say yes.

18 Q. There is. And do you know what entity
19 that is, if you know?

20 A. The entity I had in mind was -- it's a
21 project called the Southern Cross project, which
22 has a similar origination point to our projects --
23 well, it's not similar. It's Texas. But it's in
24 the wind belt region and then carries energy to the

1 southeastern United States. It's not an exact
2 replica but a similar feed.

3 Q. Is that going from Texas to southeast
4 or from Kansas to southeast?

5 A. Texas.

6 Q. Texas.

7 MR. NEILAN: I have no further
8 questions, Your Honor.

9 JUDGE VON QUALEN: Mr. McNamara.

10 MR. McNAMARA: Thank you, Judge.

11 CROSS-EXAMINATION

12 QUESTIONS BY MR. McNAMARA:

13 Q. Mr. Berry, my name's Edward McNamara.
14 I represent Concerned Citizens and Property Owners.

15 A. Good afternoon, Mr. McNamara.

16 Q. Good afternoon. You were present I
17 believe Monday and Tuesday at least during the
18 majority of the testimony of Mr. Lawlor and
19 Mr. Skelly; is that not correct?

20 A. That's correct.

21 Q. Questions arose at that time and I
22 questioned I believe Mr. Skelly and Mr. Lawlor and
23 I believe the judge raised questions as well with
24 regard to the proposed easement which is your

1 Exhibit 7.17. Do you recall that testimony, sir?

2 A. I recall that line of questioning, yes.

3 Q. Now, it's my understanding that you're
4 proposing that in this case prior to proceeding
5 with any construction that you would demonstrate to
6 this Commission that you had financing in place to
7 complete the construction; is that correct?

8 A. Yes.

9 Q. And it would be similar to the proposal
10 that you made -- well, it's similar to a proposal
11 and in fact part of the Order in the RICL case. Is
12 that not correct?

13 A. Yes.

14 Q. With regard to that Order and
15 limitation, as it is, would your company be
16 agreeable to a proposal by which you would
17 demonstrate to this Commission prior to attempting
18 to obtain any easements that you in fact
19 demonstrate to this Commission that you have the
20 money in place not only to construct the project
21 but a good faith effort as to what it's going to
22 cost you to acquire the easements through
23 negotiation?

24 A. I'm sorry. Could you restate the

1 question?

2 Q. Sure. The restriction in RICL said you
3 can't proceed with construction until such time as
4 you had the money in place to finance it. Is that
5 your understanding?

6 A. Yes.

7 Q. I would like to propose another
8 restriction by which you could not acquire any
9 easements, at least by condemnation, or negotiation
10 for that matter, prior to showing this Commission
11 and demonstrating in a similar manner that you had
12 financing in place for the easements as well.
13 Would you -- your company entertain such a
14 restriction on the order as may issue?

15 A. If I understand you correctly, I think
16 that condition would be problematic. But I also
17 have to say that we would have to see a proposed
18 condition and our counsel would have to review it
19 before I could agree to it.

20 Q. So at this point in time you could not
21 agree to that. You find it problematic?

22 A. That's correct.

23 Q. And in what respects problematic?

24 A. Well, typically, at least having a

1 majority of the right-of-way acquired for a project
2 is a precondition to raising the financing. So
3 saying that you have to have the financing in place
4 before acquiring easements would create a catch-22.

5 Q. Under the restriction as it is could we
6 not end up with a situation by which you would
7 acquire the easements, either by negotiation or by
8 eminent domain, and then not have the financing to
9 proceed with the construction? Is that not a
10 possibility?

11 A. I'd say it's unlikely that that would
12 be the base, but -- but it's theoretically possible
13 that we could acquire some easements and then not
14 ultimately be able to construct the project as
15 those easements contemplate, in which case we would
16 release those easements.

17 Q. Well, in point in fact, you could get
18 to the position where you'd acquired all the
19 easements throughout the state, either voluntarily
20 or by condemnation, and still not have the money to
21 build the project. Is that not theoretically
22 possible?

23 A. Is your question would that be
24 foreclosed by the financing condition we've

1 proposed?

2 Q. No. I don't think it would be
3 foreclosed and that's the problem I have. It would
4 appear to me that there could be a real possibility
5 that your company could acquire the necessary
6 easements to build this line but not have the
7 capital to build it. That's why my citizens are
8 concerned.

9 JUDGE VON QUALEN: Is there a question
10 pending?

11 MR. McNAMARA: Excuse me, Judge. I
12 believe there's a question pending. If not, I'll
13 repeat it.

14 A. I didn't -- I didn't hear the question.

15 Q. Is there not a possibility that your
16 company could acquire all of the easements across
17 the state through negotiation or through
18 condemnation and then not have the capital or
19 decide not to build the line?

20 A. I think that's -- that's very unlikely,
21 but I would agree with you it doesn't seem to be
22 foreclosed by the condition we've proposed.

23 Q. I believe it was Mr. Skelly in
24 questioning by the judge, that what would happen in

1 that instance is that you would voluntarily abandon
2 those easements?

3 A. I -- I -- we would release them. I
4 don't know if abandon is the right word. But if we
5 don't build the project that's contemplated by the
6 easements, we would have no interest in continuing
7 to have easements under which we have obligations.

8 Q. More importantly, would you be willing
9 to abandon and void any easements that you might
10 have acquired and not only give up your obligations
11 but more importantly give up your rights to use
12 those easements?

13 A. Could you rephrase the question?

14 Q. Sure. Be glad to.

15 Assuming that at some point in time
16 you've acquired the easements in question, either
17 all or part of them, and the project does not go
18 forward. Would you be willing at that time to give
19 up not only the obligations that you have but also
20 the rights that you have to utilize the property of
21 my clients?

22 A. If the project is definitively not
23 going to proceed, we would have no interest in
24 having a right on the landowner's land and we would

1 release them, as Mr. Skelly said.

2 Q. And void them so you had no further
3 interest in those easements?

4 A. Yes.

5 Q. And would you be willing to have such a
6 provision put into any proposed easement? I'm
7 looking at 7.17 -- Grain Belt Express 7.17 and I do
8 not see such a condition in that easement. Would
9 you be willing to amend and file as a late-filed
10 exhibit in this case an amended Exhibit 7.17?

11 A. I would say we're willing to consider a
12 change to the easement agreement. I'm not able to
13 negotiate a new provision sitting here right here
14 today. I'd have to consult with my real estate
15 team and legal team. The principle is one to which
16 we're agreeable.

17 Q. I was interested this morning in Mr.
18 Langley's testimony where at certain points
19 throughout the process his company would acquire
20 land, maybe build all or part of a wind farm, maybe
21 even bring it to production and actually transport
22 some of the energy in question. In this case as
23 well could you not at some point in time reach a
24 decision that it would be in the best economic

1 interest of the owners of your company to transfer
2 the rights that you might have to build and start
3 this project prior to completing the project?

4 Isn't that a possible scenario in this case?

5 A. I don't think we would ever transfer
6 the rights or easements we had.

7 Q. Will you agree with me that that is a
8 possibility depending upon the economics of the
9 situation?

10 A. I don't see any circumstance where the
11 Applicant in this proceeding, Grain Belt Express,
12 would transfer easements or its rights under this
13 certificate. I don't even think you could assign a
14 certificate.

15 Q. Likewise then, if you're willing to do
16 that, if you're willing to make -- are you willing
17 to make that commitment to this Commission and have
18 that as a part of the Order in this case that it's
19 Grain Belt that's going to finance it, finish it,
20 and transport the energy in question?

21 A. Again, I'm just not able to agree to
22 conditions on the certificate on the stand today.
23 If you'd like to propose that, we'll certainly
24 review it and I think we can respond to it in the

1 briefs or at the appropriate time.

2 Q. I believe you testified earlier this
3 afternoon that Bluescape has already put in some
4 \$12 million. Is that correct?

5 A. It is.

6 Q. I believe the testimony likewise was
7 that Bluescape would be obligated under their
8 commitment to put in another \$5 million assuming
9 that the Oklahoma -- is it corporation division
10 approves? Is that the contingency on that extra
11 five million?

12 A. I don't know whether that approval is a
13 condition of them investing. I know it would be a
14 condition of them converting their preferred equity
15 to common equity.

16 Q. Okay. So I'm correct -- and I don't
17 want to dig into it if you don't know, but you --
18 am I correct that you don't know the conditions
19 that Oklahoma would put on before they would allow
20 Bluescape to be part of the situation?

21 A. I'm not aware that they'd put any
22 conditions on their approval if they approve the
23 transaction.

24 Q. It's my understanding -- and I wasn't

1 involved in the RICL case, but that you've made a
2 supplemental filing in the RICL case asking for
3 what I would call an advisory order as to whether
4 or not the new financing from RICL requires
5 approval of this Commission? That's a question.

6 A. I'm sorry. What's the question?

7 Q. Okay. Back again. It's my
8 understanding that you've filed a supplemental
9 pleading in the RICL case asking for an opinion
10 from this Commission as to whether or not the
11 Bluescape financing requires approval of the
12 Commission; is that correct?

13 A. It is.

14 Q. And has there been any action on that
15 petition?

16 A. I don't know if there's been further
17 action after we filed.

18 Q. Are you advised as to whether or not
19 that will be a separate proceeding before this
20 Commission by which stakeholders will have the
21 right to weigh in?

22 A. I don't know.

23 Q. Getting back to our RICL situation with
24 regard to construction, it's my understanding from

1 reading the conditions that it will be between
2 Grain Belt Express furnishing documents to the
3 Commission ex parte, without participation by the
4 stakeholders, and that's the way this thing will be
5 determined as to whether or not you have the right
6 to go forward with construction. Is that your
7 understanding?

8 MR. MacBRIDE: Excuse me. Objection.
9 The question's unclear. I'm not sure what
10 Mr. McNamara is referring to.

11 JUDGE VON QUALEN: Could you shorten
12 the question?

13 MR. McNAMARA: I'll try to.

14 Q. Mr. Berry, do you contemplate there
15 will be a separate filing and second docket opened
16 with this Commission if and when RICL determines it
17 has financing in place for construction?

18 MR. MacBRIDE: Wait. I'm sorry. Is
19 Counsel asking about Grain Belt or Rock Island?

20 MR. McNAMARA: Rock Island. Excuse me.

21 MR. MacBRIDE: Well, I'm sorry, if
22 Counsel is asking about the condition in the Rock
23 Island order, I mean it speaks for itself as to
24 what's required.

1 MR. McNAMARA: Judge --

2 JUDGE VON QAULEN: The witness may
3 answer if he has an opinion on that.

4 A. I don't recall that the condition
5 specifically prescribes a docket. We file it with
6 Commission staff. I don't know whether the
7 Commission either would or would have the ability
8 to start a new docket.

9 Q. The first quarter of this year you went
10 to your original -- the existing investors at that
11 time and asked for additional capital; is that not
12 correct?

13 A. Yes.

14 Q. And at that time was there a proposed
15 budget that you were attempting to meet?

16 A. Yes.

17 Q. And what was the proposed budget? How
18 much capital did you need at that time?

19 A. Well, the budget was on an annual
20 basis. And we only funded part of that budget
21 because we were working to bring on or at least
22 considering bringing on new investors to fund the
23 balance and further because it was only necessary
24 to fund a specific period of time rather than the

1 full budget.

2 Q. Do you work on a calendar-year basis?

3 A. Could you clarify for what purpose?

4 Q. For figuring your budget. Do you
5 figure it for '95-96 as opposed to some other time
6 period?

7 A. It's a calendar-year budget.

8 Q. Okay. And for calendar year '95,
9 during the first quarter did you go and try to get
10 the capital necessary to get you through the year?

11 MR. MacBRIDE: Excuse me, Judge, I'm
12 not understanding what '95 is.

13 MR. McNAMARA: Excuse me. 2015. I'm
14 20 years -- excuse me. I'm living in the past.
15 I'm sorry. For 2015. Excuse me.

16 A. And I'm sorry. Could you restate the
17 question?

18 Q. Okay. At the beginning of 2015 did you
19 go out to get the necessary capital to fund your
20 operations through 2015?

21 A. We raised and asked our existing
22 investors to put in part of the capital for that
23 budget in the first quarter.

24 Q. And they had the right to put in all

1 the capital; did they not?

2 A. Yes, they could have elected to fund it

3 all themselves.

4 Q. And they didn't -- they didn't choose

5 that election?

6 A. That's correct.

7 Q. And how much -- and that was for 17,000

8 to get you through 2015 -- 17 million through 2015?

9 A. No.

10 Q. Then correct me. How much money did

11 you need at that time to get you through the 2015?

12 A. Approximately 25 million.

13 Q. And how much of that 25 million did you

14 raise by the current investors at the first of this

15 year?

16 A. I should clarify. The 25 million was

17 the total budget for the year, so we started with

18 some cash on hand that could contribute to that

19 budget.

20 Q. What did you start with cash on hand?

21 A. I don't recall the exact figure. So --

22 I need you to restate the question. I'm sorry.

23 Q. Pardon?

24 A. I need you to restate the question.

1 I'm sorry.

2 Q. For the year 2015, you, as the finance
3 man, I take it determined how much money your
4 company would need to get you through the year
5 2015; is that correct?

6 A. Yes.

7 Q. And what did you determine your budget
8 would be for 2015? How much did you need to get?

9 A. Our budget at the beginning of the year
10 was approximately \$25 million. I don't know the
11 exact figure.

12 Q. Okay.

13 A. And the amount of capital we determined
14 we needed to raise was slightly less than that
15 because we had -- we had cash on hand.

16 Q. And that slightly less figure was how
17 much, sir?

18 A. I don't know exactly.

19 Q. Would it have been more or less than 20
20 million?

21 A. Less.

22 Q. Would it be more or less than 15
23 million?

24 A. Less.

1 Q. Would it be less than ten million?

2 A. Yes.

3 Q. Approximately how much more did you

4 need to get you through 2015?

5 A. Approximately 20 million.

6 Q. You've confused me now. In any event,

7 in the first quarter of this year did you reach a

8 determination that you would need an extra \$20

9 million to get through the end of 2015?

10 A. Not in the first quarter of this year.

11 Q. Did you revise your budget later in the

12 year 2015?

13 A. We did agree on a new budget at close

14 with Bluescape which was an updated budget based on

15 their investment.

16 Q. Well, how did your budget vary once you

17 got Bluescape on board?

18 A. There were adjustments because we had

19 latest -- you know, additional information about

20 exactly what each project needed and what things

21 would cost and we had at that point six months of

22 actual results. But the overall amount of the

23 budget was comparable.

24 Q. Did you reach a determination at some

1 time during the second quarter that you would need
2 the \$12 million that Bluescape was going to put in?

3 A. We understood that we needed additional
4 capital.

5 Q. And was that additional capital \$12
6 million?

7 A. We -- we set out to raise the 17
8 million.

9 Q. Okay. And then I take it upon your
10 past business practices, you didn't raise more than
11 you needed?

12 A. We --

13 Q. You don't park cash is what I'm getting
14 to.

15 A. We raised more than we needed for the
16 balance of this year. We only funded the first \$12
17 million at the closing of Bluescape.

18 Q. Well, what did you need to get you
19 through this year?

20 A. At what point in time?

21 Q. It's my understanding that you revised
22 your budget as of the second quarter of this year;
23 is that correct?

24 A. Yes.

1 Q. And as of the time that you revised
2 your budget what did you estimate at that time you
3 would need in additional capital to get through
4 this year?

5 A. I don't have an exact figure. I'll try
6 to give you an estimate.

7 Q. That would be great.

8 A. Our budget for the year was
9 approximately 25 million. We needed I'll say
10 approximately twelve million of additional funds
11 this year to finish out the year.

12 Q. So am I correct then with the
13 additional twelve million from Bluescape, as of
14 December 31 of this year you'll be even, you'll be
15 out of money unless you get another five million,
16 assuming your calculations are correct?

17 A. I wouldn't characterize it as we'll be
18 out of money. We will need to call the remaining
19 amount of Bluescape's investment.

20 Q. And that's contingent upon Oklahoma
21 approval?

22 A. As I stated earlier, I don't know that
23 their commitment is contingent on that. All I know
24 is that their conversion is contingent on that

1 approval. I think that was the primary focus of
2 the application in Oklahoma.

3 Q. Thank you. And we really don't know at
4 this time as we sit here as to whether the Illinois
5 Commission is going to be able to weigh in and
6 either approve or disapprove the Bluescape
7 investment. Do you understand the question?

8 A. I was waiting to hear the question,
9 sir.

10 Q. Okay. I'm sorry. My question is as
11 follows: As of today's date do you have approval
12 from the Illinois Commerce Commission as to the
13 Bluescape investment?

14 MR. MacBRIDE: Well, objection. He
15 hasn't testified that approval of the Illinois
16 Commission is needed for the Bluescape investment.

17 MR. McNAMARA: That's not my question.
18 I think he can answer the question and then I'll
19 follow up, Judge. I'll clear it up.

20 JUDGE VON QUALEN: You may answer.

21 A. We have not received an approval of the
22 Commission with respect to the investment.
23 Regardless of whether one's needed or not, we've
24 not received the approval.

1 Q. Thank you. And to be fair about it,
2 you might not need the approval?

3 A. Correct.

4 Q. If Bluescape puts in the additional \$33
5 million and if all of the stars align and Bluescape
6 is able to convert that 50 million in investment
7 into common stock, what percentage of the common
8 stock will Bluescape own?

9 A. I don't have that number off the top of
10 my head.

11 Q. If that same scenario occurs and
12 Bluescape is a \$50 million investor in common stock
13 in your company, will they be the largest
14 outstanding shareholder in your company?

15 A. I don't know. I think at that point
16 their interest would be comparable to the interests
17 of Ziff and Grid today.

18 Q. Pardon?

19 A. Their interest would be comparable to
20 Ziff and Grid today -- to ZAM Ventures, excuse me,
21 and National Grid today. I don't know whether it
22 would be larger or smaller.

23 Q. By comparable you mean essentially the
24 same. Is that a fair way to put it?

1 A. Similar.

2 Q. Okay. There was some discussion when
3 investments were being made, I believe by
4 Bluescape, and I was a bit puzzled. It seemed to
5 me there was some indication that an investor could
6 earmark their investment say to one of your
7 projects, such as this project, the Iowa project,
8 or some other project. Was I misled or confused on
9 that?

10 A. I wouldn't say whether you were misled
11 or confused, but that's not the case.

12 Q. So when an investor puts money in, then
13 the board decides where to allocate that money?

14 A. That's correct.

15 Q. I'm still not understanding as to the
16 path forward in Missouri. Has the board made a
17 decision as to the path forward in Missouri?

18 A. They have decided that we should
19 continue with the project in Missouri. They have
20 directed us to exhaustively research and explore
21 the three different options that I've discussed and
22 Mr. Skelly has discussed. We are still at the
23 stage of exploring those options to determine which
24 the best one is. We haven't definitively decided

1 either as a management team or a board which one of
2 the three to pursue.

3 Q. And the three options being what, sir?

4 A. Appealing the Order that's come down,
5 refiling --

6 Q. Let me stop you right there. And that
7 would be an appeal to the court system?

8 A. Yes.

9 Q. What is your time limit as far as
10 filing with the courts?

11 A. I don't know.

12 Q. Go ahead with the other two, please.

13 A. Filing a new docket in Missouri, which
14 is something the Public Service Commission
15 explicitly stated in the Order that we could do, or
16 pursuing an alternate permitting process through
17 the federal government for the project in Missouri.

18 Q. And when will the board make that
19 decision, sir?

20 A. I'd say when we have enough information
21 to make the decision.

22 Q. I'm going to refer your attention -- do
23 you have your direct testimony there?

24 A. I do.

1 Q. Please look at page 3 and I'll refer
2 your attention to lines 59 through 61. Have you
3 had a chance to read that, sir?

4 A. Yes.

5 Q. You used the word "opine" and you're
6 referring to regional transportation organizations,
7 and I believe what you're saying is, when you refer
8 to them, is they will not opine, o-p-i-n-e, on
9 whether it is needed. In layman's terms does that
10 mean that they're not going to testify in this case
11 that the project is needed?

12 A. They would not do so.

13 Q. Did you request their testimony?

14 A. No.

15 Q. Likewise, I'm going to read -- refer
16 your attention starting on page 5, line 107,
17 through page 6, line 123. What does the acronym
18 RFI mean?

19 A. Request for Information.

20 Q. And you've sent out a number of
21 Requests for Information to potential customers; is
22 that correct?

23 A. In this case it was just to wind
24 generators.

1 Q. Excuse me, wind generators. Have any
2 of those wind generators testified in this case?

3 A. Yes.

4 Q. And who was that?

5 A. Mr. Langley's company, Infinity Wind,
6 was one of the companies that responded to this
7 RFI.

8 Q. And how many RFIs did you send out?

9 A. Just one.

10 Q. You were present today and listened to
11 some cross-examination with regard to Infinity;
12 were you not?

13 A. I was here.

14 Q. With regard to these other companies,
15 counsel for Intervenor's will, I take it, not have
16 the opportunity to cross-examine them? You're not
17 going to bring them in to testify and tender them
18 for cross-examination.

19 A. You're asking me?

20 Q. Yes, sir. That's what I'm asking you.

21 A. Sorry.

22 Q. I just want --

23 A. I didn't hear a question.

24 Q. Excuse me. I don't want to interrupt

1 you.

2 A. No, that's fine.

3 Q. Can you answer the question as is?

4 A. I didn't hear a question.

5 Q. Okay. You refer to these RFIs that

6 you've sent out to a number of wind generators;

7 correct?

8 A. Yes.

9 Q. And this morning we had a wind

10 generator before the Commission and Counsel was

11 able to ask him a few questions. You were present;

12 right?

13 A. I was.

14 Q. With regard to all of these other wind

15 generators to whom you sent RFIs we will not have

16 the opportunity to question them; is that -- do you

17 agree to that?

18 A. I don't -- I don't think you would.

19 Q. Thank you. I'm going to refer your

20 attention to page 46 of your testimony, lines 942

21 through 954.

22 A. And this is my direct testimony?

23 Q. Yes, sir.

24 A. Okay.

1 Q. Do you have that? And you realize what
2 you said there; correct?

3 A. I remember it well.

4 Q. Okay. Thank you. You refer to your
5 company providing transmission service pursuant to
6 a tariff; is that correct?

7 A. Yes.

8 Q. As to that tariff, it will not be a
9 tariff that will be approved or disapproved by this
10 Commission; am I correct?

11 A. That's correct. It's submitted to
12 FERC.

13 Q. I'm going to next refer your attention
14 to page 60 of your direct examination, lines 1272
15 through 1291. Do you have it? If this Order is
16 entered and you're approved as a public utility to
17 build the line, there'll be a number of
18 requirements from this Commission; is that correct?

19 A. Yes.

20 Q. And you've chosen to come to this
21 Commission and submit yourself or your company's --
22 your company to the jurisdiction of this
23 Commission; is that correct?

24 A. Yes.

1 Q. Am I correct likewise that by
2 submitting to the jurisdiction of this Commission,
3 at some point in time, if necessary, you will have
4 the right to file a separate petition with this
5 Commission seeking eminent domain?

6 A. Could you repeat that question for me?

7 Q. Sure.

8 A. I want to make sure I get it just
9 right.

10 Q. Assume that you're successful in this
11 case. A follow-up to such success will be the
12 right to come back to this Commission and seek the
13 right to eminent domain?

14 A. I understand that to be true, provided
15 that we had exhausted all reasonable efforts to
16 acquire the parcels that were the subject of that
17 request.

18 Q. But for that eminent domain authority,
19 you would have to have voluntary approval over each
20 and every landowner over which this line will go;
21 is that not correct?

22 A. Yes.

23 Q. And a driver, a reason to come before
24 this Commission, a major driver, is the ability to

1 at some point in time acquire the right to eminent
2 domain?

3 A. It's certainly one part of making a
4 project like this feasible, yes.

5 Q. Well, I'm going to refer your attention
6 then to lines -- page 60, lines 1272 to 1291, and
7 there are a number of bullet points there. Do you
8 have those in front of you?

9 A. I do.

10 Q. The first bullet point being the
11 Commission will have the right to exercise some
12 control as to negotiations with landowners. Is
13 that correct?

14 A. Yes, that's my understanding.

15 Q. And that's all part and parcel of
16 eminent domain?

17 A. I don't -- I don't know that I was
18 referring here specifically to that. I think there
19 may be other ways that the Commission regulates
20 land acquisition activities in addition to
21 overseeing any filing of eminent domain.

22 Q. Okay. That's a good point. But in any
23 event, the Commission will have the right pursuant
24 to its regulations to regulate in some respects

1 your contact with landowners?

2 A. I believe that to be true.

3 Q. The Commission likewise will have the
4 opportunity to determine whether you construct the
5 project or not?

6 A. I believe that's the question in this
7 proceeding, yes.

8 Q. The Commission will have the right to
9 have jurisdiction as to the issuance of securities
10 by your company?

11 A. I'm sorry. That's a question?

12 Q. Yes. I believe that's the third bullet
13 point.

14 A. I know that's subject to regulation and
15 there are some circumstances where an approval is
16 required and some circumstances where it's not.

17 Q. Okay. The fourth bullet point, the
18 Commission will have the right to regulate your
19 contract -- contracts with affiliated interests; is
20 that correct?

21 A. Yes.

22 Q. The fifth bullet point, the Commission
23 will have the right to make certain determinations
24 in the event of a reorganization under the Public

1 Utilities Act 7-204; is that correct?

2 A. Yes.

3 Q. Next bullet point, you're going to have
4 to give the Commission access to your financial
5 records; is that correct?

6 A. It is.

7 Q. The last bullet point, you're going to
8 have to report accidents to the Commission; is that
9 correct?

10 A. Yes.

11 Q. And you're submitting yourself to
12 jurisdiction of this Commission and getting
13 yourself organized to the point that you have to
14 follow the Commission's directions. Bottom line,
15 you want the right of eminent domain that comes
16 with the obligation; is that not correct?

17 MR. MacBRIDE: Excuse me, Counsel,
18 could you clarify what you mean by with the
19 obligation? What's the obligation you're referring
20 to?

21 MR. McNAMARA: The obligations are to
22 submit to the jurisdiction of this Commission as to
23 your dealing with landowners, as to your furnishing
24 financial -- all of the bullet points I've just led

1 your client through.

2 Q. You're taking on obligations and
3 restrictions with this Commission; is that correct?

4 A. We are.

5 Q. And the driver for that is the ability
6 if at some point in time you need to exercise
7 eminent domain?

8 A. That's one consideration but not the
9 only one.

10 Q. Well, is there an advantage to your
11 company to have the Commission to be able to weigh
12 in on reorganizations?

13 A. I couldn't say there's an advantage to
14 us, no.

15 Q. Is there an advantage to your company
16 to have to submit your financial records to this
17 Commission?

18 A. I don't think there's an advantage or a
19 disadvantage.

20 Q. Well, tell me the advantage of having
21 someone such as the Illinois Commerce Commission
22 able to review your financial condition.

23 A. Well, my understanding is that that is
24 part and parcel of being authorized to build a

1 public utility project in the state, which is what
2 we're proposing to do.

3 Q. And that's what I'm getting at. You're
4 willing to take on these obligations in order to be
5 able to build this transmission line?

6 A. Yes.

7 Q. And in order to build this transmission
8 line you're going to need at some point in time the
9 ability to exercise eminent domain?

10 A. I think that's likely necessary to
11 complete the project.

12 Q. Thank you. We talked a little bit
13 earlier -- let's assume -- in the RICL case you've
14 submitted yourself to jurisdiction of the
15 Commission or at least asking the Commission if
16 they have jurisdiction with regard to Bluescape; is
17 that correct?

18 A. We submitted a filing with the
19 Commission related to the Bluescape investment,
20 asking them to either find they didn't need to
21 issue an approval or issue an approval if it was
22 needed.

23 Q. There's a third alternative to that, is
24 there not, that the Commission could come back and

1 say to you we're not going to approve Bluescape?

2 That's a third possibility.

3 MR. MacBRIDE: Well, objection.

4 Counsel is mischaracterizing the filing. I mean,
5 this -- in the interest of time, this questioning
6 is sort of wasting time because it's not accurately
7 describing what was requested in the filing.

8 JUDGE VON QUALEN: Mr. McNamara, relate
9 your questions to the proceeding that we have
10 before us right now.

11 Q. If either Oklahoma or Illinois decides
12 that Bluescape cannot invest in your company, will
13 Bluescape have the right to the return of their
14 investment?

15 MR. MacBRIDE: Objection. At least in
16 Illinois the Commission has not been asked to
17 approve the Bluescape investment.

18 MR. McNAMARA: I think it's a good
19 question. What if -- the Commission can certainly
20 say, ah, you've made us aware of Bluescape. When
21 we heard your case, we weren't aware of it. Now
22 that we are aware of it, we're not going to approve
23 it.

24 MR. MacBRIDE: Well, no. They don't

1 have any authority not to approve it. We've -- I
2 mean, if Counsel had obtained the filing, which is
3 on e-Docket, you know, he could ask questions that
4 were based on the actual filing, not on a
5 misdescription of the filing. I mean, if you would
6 like, I can state what has been requested of the
7 Illinois Commission.

8 JUDGE VON QUALEN: Mr. MacBride, go
9 ahead.

10 MR. McNAMARA: I'll defer to you.

11 MR. MacBRIDE: All right. As has been
12 testified by Mr. Berry and maybe other witnesses,
13 Bluescape has purchased preferred units,
14 essentially preferred stock, in Clean Line.
15 Therefore, they are not at this time a common
16 equity holder. They have a right under the
17 subscription agreement to convert the preferred
18 units into common units.

19 In reviewing the reorganization
20 statute, Section 7-204, there is a potential issue,
21 depending on how that statute is interpreted, that
22 the conversion by Bluescape of its preferred units
23 into its common units would constitute a
24 "reorganization" as defined in Section 7-204,

1 thereby requiring Commission approval.

2 The reason that is potentially the case
3 under the definition of reorganization is that if
4 Bluescape were to convert its preferred units into
5 common units, the existing investor ZAM, which is
6 currently the majority investor, by which I mean
7 holding more than 50 percent of the common
8 interest, would no longer hold -- would then hold
9 less than 50 percent of the common interest. So
10 there would no longer be a majority common equity
11 owner. One could construe 7-204 to state that that
12 series of events constitutes a reorganization
13 requiring Commission approval.

14 Therefore, Rock Island as a public
15 utility, pursuant to Docket 12-560, has filed a
16 petition asking the Commission -- presenting those
17 facts and asking the Commission to determine
18 either, A, that the conversion by Bluescape of its
19 preferred units into common units does not
20 constitute a reorganization, or, B, if the
21 Commission determines that that transaction is a
22 reorganization as defined in the statute, to
23 approve it pursuant to Section 7-204.

24 As you can see, I hope, from my

1 explanation, the filing does not request an
2 approval of Bluescape's right to make the
3 investment it has made in Clean Line.

4 MR. McNAMARA: I don't want to
5 interrupt anyone, but at the appropriate time I'd
6 like to respond.

7 MR. MacBRIDE: I've completed my
8 description.

9 MR. McNAMARA: Thank you.

10 JUDGE VON QUALEN: Mr. McNamara.

11 MR. McNAMARA: Briefly, Judge.
12 Sometimes when we file requests with this
13 Commission and other regulatory bodies, we get a
14 decision that we do not like. As I hear Counsel
15 stating --

16 JUDGE VON QUALEN: Is this an argument
17 or is this an explanation for your line of
18 questions?

19 MR. McNAMARA: This is an explanation
20 for my line of questions. If you ask for approval,
21 you might not get approval. My line of questions
22 is based upon the fact that there is a possibility
23 that the Commission will come back and say it is a
24 reorganization and we're not going to approve it.

1 Based upon that, I'd like to ask a few brief
2 questions. I know we have limited time and I'll
3 get on with it.

4 JUDGE VON QUALEN: Please do.

5 MR. McNAMARA: Thank you.

6 Q. (by Mr. McNamara) You've heard the
7 comments of Counsel and my reply?

8 A. Yes.

9 Q. You've heard what we said?

10 A. Yes.

11 Q. Okay. Let's assume that for one reason
12 or another the Commission comes back and says it is
13 a reorganization and we are not going to approve
14 the reorganization. In that instance does
15 Bluescape have the right to a refund of the \$12
16 million that they've already put in?

17 A. Well, first, we haven't asked them that
18 question because I don't think there's any reason
19 to believe that their initial \$12 million in the
20 preferred units is a reorganization.

21 And second, they have no right to
22 return of any of their capital no matter how that
23 particular filing turns out.

24 Q. Thank you, sir. In the event the

1 Commission would, once again this scenario, come
2 back and say we're not going to approve it, it is a
3 reorganization, no approval, at that time does
4 Bluescape have the right not to contribute the
5 additional five million for which they've
6 committed?

7 A. There's no condition around the
8 Illinois filing with respect to the conversion that
9 relates to their additional five million. So that
10 five million they're obligated to contribute
11 regardless of the outcome of our filing with regard
12 to some future conversion.

13 Q. I don't believe that's my question.
14 Let me just try and make it simpler.

15 If the Commission reaches -- issues an
16 Order and for one reason or another they say two
17 things, it is a reorganization and we're not going
18 to approve Bluescape as an investor, at that point
19 in time will you as a company and Bluescape as a
20 company honor that decision and not either request
21 nor allow the addition of \$5 million to your
22 company?

23 MR. MacBRIDE: Judge, I object. The
24 question mischaracterizes what has been requested

1 of the Commission in the other docket.

2 MR. McNAMARA: We've been through this.

3 MR. MacBRIDE: There's no -- no.

4 There's no approval requested or needed for
5 Bluescape to make the investment it's made. It is
6 only -- the only potential approval is for
7 Bluescape to exercise its right to convert
8 preferred units into common units.

9 MR. McNAMARA: I mean, we've been back
10 and forth through this. I just ask that the
11 question be answered.

12 JUDGE VON QUALEN: I believe, Mr.
13 Berry, what he's asking is, if the Commission does
14 not approve the -- finds that the transaction is a
15 reorganization and does not approve it, will
16 Bluescape and Clean Line honor the fact that
17 Bluescape cannot transfer their preferred stock
18 into common stock?

19 A. We would not effect the conversion if
20 it was contrary to a decision of the Commission.

21 JUDGE VON QUALEN: Can we move on now?

22 MR. McNAMARA: You certainly may. I
23 will, Judge. Excuse me.

24 Q. With regard to Oklahoma, is there a

1 deadline by which Oklahoma has to approve the
2 Bluescape investments?

3 A. Again, we're not asking them to approve
4 the investment that Bluescape has made, but there
5 is a deadline by which they have to rule on what
6 we've asked them, which as best I understand it is
7 related again to the conversion of those units, the
8 preferred units into common equity units.

9 Q. And what's that date?

10 A. I don't know. I know it's a matter of
11 a few months, but I don't know whether it's 90 days
12 or 60.

13 Q. Approximately how much time do we have
14 left?

15 A. We made the filing within the last
16 month.

17 Q. Thank you. And if the Commission --
18 the regulatory body in Oklahoma does not approve
19 the conversion, it's my understanding that
20 Bluescape no longer has the obligation to put in
21 another \$5 million?

22 A. I don't recall whether that is a
23 condition or not of their additional five million
24 investment. I just don't know.

1 Q. Thank you.

2 A. If -- I could review the agreements,
3 but I just don't recall off the top of my head.

4 MR. SHAY: Your Honor, if I may, could
5 I approach Mr. MacBride about this issue? I think
6 we can resolve that.

7 JUDGE VON QUALEN: Please. Shall we
8 take a short break? We'll take ten minutes.

9 (A recess was taken from
10 3:08 p.m. until 3:18 p.m.)

11 JUDGE VON QUALEN: Back on the record.
12 Did we resolve any issues during the
13 break?

14 MR. SHAY: Your Honor, I approached
15 Mr. MacBride about clearing up this question that's
16 been asked of Mr. Berry and the answer concerning
17 any conditions attached -- concerning the OCC
18 approval attaching to the Bluescape investment or
19 conversion, and I might be able to help get that
20 clarified.

21 MR. MacBRIDE: I think if you were to
22 allow Mr. Shay to ask a couple more questions here,
23 even though he's otherwise done, which I won't
24 object to, I think we'll be able to get to the

1 point here quickly.

2 JUDGE VON QUALEN: Do you have any
3 objection to that, Mr. McNamara?

4 MR. McNAMARA: No, Judge, I don't.

5 JUDGE VON QUALEN: Mr. Shay, proceed.

6 MR. SHAY: Judge, I would need to
7 approach the witness.

8 Mr. Berry, upon review of those
9 documents, do you care to reconsider your answer to
10 previous questions about the OCC approval condition
11 attached to Bluescape's additional investment?

12 A. Yes. I didn't recall, but on reviewing
13 the agreement I'm able to say that the additional
14 five million investment for Bluescape, the
15 company's ability to call that capital is
16 conditioned on receiving the OCC approval.

17 MR. SHAY: Okay. That's all I have.
18 Thank you.

19 MR. McNAMARA: Very briefly, Judge.

20 JUDGE VON QUALEN: Proceed.

21 Q. (by Mr. McNamara) Getting back to a
22 question that I posed a few minutes ago, am I
23 correct then that if your budgeting is online and
24 you don't have to make major adjustments, at the

1 end of the year, assuming no more capital infused,
2 assuming that you cannot call upon Bluescape for
3 the extra five million, will you at the end of the
4 year then be out of money?

5 A. If we follow our budget to the T, yes.
6 If we were in that situation, we would make
7 adjustments so we don't, quote, run out of money.

8 Q. But that's my question. If you
9 followed your budget to the T, you'd be out of
10 money at the end of the year?

11 A. That's correct.

12 Q. And I quizzed you prior with regard to
13 eminent domain. Am I correct that if the order is
14 entered in this case and you're granted authority
15 to build the line, you would then proceed pursuant
16 to the Commission regulations to attempt to acquire
17 easements voluntarily?

18 A. That's correct.

19 Q. And in the event you could not acquire
20 easements voluntarily, you'd have to come back to
21 this Commission for approval before you were
22 allowed to exercise eminent domain?

23 A. I know there are additional filings. I
24 don't really know anything about the nature of

1 those filings.

2 Q. Could we agree subject to check that if
3 you did come back to the Commission with those
4 additional filings that pursuant to statute the
5 Commission would be required to either approve or
6 disapprove the eminent domain as to particular
7 landowners within 45 days?

8 A. I don't know.

9 MR. McNAMARA: That's all I have,
10 Judge. Thank you.

11 JUDGE VON QUALEN: I believe that
12 completes the cross-examination of Mr. Berry.

13 MR. MacBRIDE: No.

14 JUDGE VON QUALEN: Oh, no.

15 MR. DAVIS: Just the confidential cross
16 and I think we can move through it pretty
17 efficiently.

18 JUDGE VON QUALEN: All right. It's
19 time to go in camera. We'll take a short break.
20 We need to clear the room. Only persons who have
21 signed the confidentiality agreement may remain in
22 the room.

23 MR. MacBRIDE: And Staff.

24 JUDGE VON QUALEN: Staff, yes.

1 (A recess was taken from
2 3:24 p.m. to 3:25 p.m.)
3 (Pages 1069-1086 of the
4 proceedings are contained in a
5 separate closed transcript.)
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1 CONTINUATION OF PROCEEDINGS

2 JUDGE VON QUALEN: Back on the public
3 record.

4 Mr. MacBride, do you have any redirect?

5 MR. MacBRIDE: Yes, Judge, just a few
6 questions.

7 REDIRECT EXAMINATION

8 QUESTIONS BY MR. MacBRIDE:

9 Q. Mr. Berry, I just have a couple
10 questions about something that came up very early
11 in your cross today about the CREZ, C-R-E-Z,
12 projects. And you stated those are all -- projects
13 are all within ERCOT; is that correct?

14 A. Yes.

15 Q. And I take it they're all within the
16 State of Texas?

17 A. Yes.

18 Q. All right. So essentially, they're all
19 within the same RTO?

20 A. ERCOT is an RTO-like entity. They're
21 within the same transmission planning commission.

22 Q. Okay. So would you consider those
23 inter-regional transmission projects?

24 A. No.

1 Q. I think you also stated that the Texas
2 legislature, the Texas governor, and the other
3 stakeholders were involved in the creation of the
4 CREZ lines. Could you just elaborate on that?

5 A. Yeah. There was specific legislation
6 that was -- that enabled the CREZ. And so while
7 the Public Utility Commission issued the final
8 certificates, those other branches of the
9 government were involved.

10 Q. You were asked a question earlier about
11 whether it was possible that when the final RTO
12 interconnection studies are completed for either
13 SPP, MISO, or PJM is it possible that you could
14 have additional upgrade costs before -- in addition
15 to the ones you currently estimate. Do you recall
16 that?

17 A. I recall.

18 Q. If there were additional upgrade costs,
19 would those costs be subject to the financing
20 condition in this case that you've proposed?

21 A. Yes, they would, because we're required
22 to certify the current cost estimate, and that
23 estimate would incorporate the final
24 interconnection with CREZ.

1 Q. And so you would need to demonstrate
2 that you had secured financing or financing
3 commitments for your total project costs including
4 those additional upgrade costs?

5 A. That's right.

6 Q. And finally, I have a question that
7 came up during the in camera portion, but this
8 doesn't require any confidential information.

9 You mentioned a process by which the
10 RTOs require you to place deposits in connection
11 with the interconnection studies. Could you just
12 elaborate more on that on how that works?

13 A. Sure. We are required to make
14 substantial up-front deposits to the RTOs and then
15 they expend the money over time. So rather than us
16 paying every month or every quarter, we pay a large
17 amount up-front and then the RTO actually draws
18 down on that amount over time.

19 Q. All right. And when you say up-front,
20 you mean at the start of the interconnection
21 request and study process?

22 A. Yes, and as you enter new stages of the
23 study process.

24 MR. MacBRIDE: Thank you. That's all

1 the questions I have on redirect.

2 JUDGE VON QUALEN: Is there any
3 recross?

4 MR. SHAY: I have a question or two,
5 Your Honor.

6 JUDGE VON QUALEN: Proceed.

7 RECROSS-EXAMINATION

8 QUESTIONS BY MR. SHAY:

9 Q. Mr. Berry, with respect to the CREZ
10 subject again, is it true that that legislation you
11 referred to, the state legislation, will enable
12 these renewable energy zones to be created or did
13 it -- in other words, I'm trying to understand how
14 prescriptive the legislation was.

15 A. I think it was fairly prescriptive. It
16 deferred the details of the program to the PUC, but
17 it stated definitively that the program should
18 happen.

19 Q. The program being what?

20 A. A series of transmission lines that
21 enable within the state of Texas the lowest cost
22 wind energy to reach the load centers.

23 Q. Who enabled the zones themselves where
24 the wind projects were to be located?

1 A. That was the function of a technical
2 study. The legislation concerned the transmission
3 lines, which are somewhat confusingly named after
4 the renewable energy zones they serve.

5 Q. Okay. Was the rate recovery mechanism
6 for these transmission lines part of that
7 legislation?

8 A. I don't know.

9 Q. And there still was, was there not, a
10 requirement of finding of need by either ERCOT or
11 the Texas commission or both for these transmission
12 lines?

13 A. They did have to issue a certificate,
14 but to the best of my knowledge, the legislation
15 basically told the PUC to find that they were
16 needed.

17 MR. SHAY: Okay. I guess we can look
18 at the legislation and discuss it in briefs if we
19 want.

20 I have no further questions. Thank
21 you.

22 JUDGE VON QUALEN: Any re-redirect?

23 MR. MacBRIDE: No, Judge.

24 JUDGE VON QUALEN: Are there any

1 objections to Grain Belt Exhibit Numbers 11.0
2 through 11.12, the direct testimony and attachments
3 of Mr. Berry, or to exhibits -- Grain Belt Exhibits
4 11.13 through 11.19, which are the rebuttal
5 testimony and exhibits of Mr. Berry?

6 MR. McNAMARA: Judge, Ed McNamara.
7 With regard to Grain Belt Express Exhibit 11.0, I
8 specifically object and ask that that portion of
9 the testimony starting on line 107 on page 5,
10 continuing throughout page 6 and through line 136
11 on page 7 be stricken prior to any of the testimony
12 being admitted into evidence.

13 I questioned Mr. Berry on this subject
14 matter. I asked him if any of the witnesses who
15 supposedly are answering these Requests for
16 Information are going to be present for
17 cross-examination. The only one that appeared for
18 cross-examination I believe was Mr. Langley this
19 morning. We did have the opportunity to and did
20 cross-examine Mr. Langley extensively.

21 This type of evidence is extremely
22 prejudicial to the Intervenor. I realize that
23 under the Commission's rules, Section 200.6.0,
24 subparagraph B, that certain evidence is admitted

1 even though it wouldn't be admitted in a circuit
2 court. But I simply do not believe that this is
3 the type of evidence that would -- that normal --
4 that prudent persons in the conduct of their
5 business would rely upon.

6 I realize it's a discretionary
7 decision. I realize we hear more often than not
8 before this Commission that, well, we'll admit it
9 subject to the weight it should be given. But in
10 this case I would ask that you exercise your
11 discretion and not admit it.

12 I think it's highly prejudicial. I
13 think the major issue in this case is need. And if
14 this is admitted, it might somehow be utilized as
15 some evidence of need. And without cross-
16 examination it's simply not proper and it's
17 certainly not the type of evidence that I believe
18 that any prudent person would rely upon prior to
19 going forth with a project of this type.

20 Thank you.

21 MR. MacBRIDE: Well, Judge, this -- Mr.
22 Berry is testifying about documents received and in
23 the possession of the company in response to this
24 RFI. I believe these documents were produced in

1 response to discovery requests, so Counsel had an
2 opportunity to examine them and see if they
3 accurately represented or accurately set forth what
4 Mr. Berry was representing in his testimony. And
5 in fact, these are exactly the types of documents
6 and information that Grain Belt is relying on to
7 proceed with this project. So it perfectly fits
8 that one criteria that Mr. McNamara alluded to. So
9 I don't see any basis for striking this on the
10 grounds that the wind companies didn't appear to
11 testify.

12 MR. McNAMARA: Judge, in brief
13 response, two things.

14 Number one, these documents are not
15 admitted into evidence. They weren't I don't
16 believe an exhibit admitted. And I would refer
17 your attention to lines 107 and 108. Specifically
18 it says "Has Grain Belt Express identified wind
19 developers who plan to use the Grain Belt Express
20 Project to deliver power to the MISO and PJM
21 markets?"

22 Well, I think in all fairness, if these
23 people are planning to -- and that's what they're
24 saying. The question asked are they planning to

1 use Grain Belt Express. Well, by golly, if they're
2 planning, they ought to take the time to come here
3 and testify and submit themselves to cross-
4 examination. I think it's terribly unfair that
5 this be admitted into evidence without cross-
6 examination.

7 Thank you.

8 JUDGE VON QUALEN: The motion to strike
9 is denied. The evidence will be given the weight
10 that it is due.

11 Are there any other objections?

12 (No response)

13 JUDGE VON QUALEN: Then Grain Belt --

14 Mr. MacBride, you're asking for
15 confidential treatment of 11.10, balance sheet,
16 income statement for a period of two years?

17 MR. MacBRIDE: We actually have a
18 provision in our application which I don't --
19 there's a section of the application in which we
20 request confidential treatment of the confidential
21 information we submitted, and frankly, I can't -- I
22 believe it was for a period of time from the date
23 of the Order, but I frankly can't remember if it
24 was two years or four years, but it's what we have

1 set forth there.

2 JUDGE VON QUALEN: All right. We'll
3 cover that in the Order then.

4 Grain Belt Exhibits 11.0 through 11.19,
5 the testimonies of David Berry, are admitted into
6 evidence.

7 (Grain Belt Express Exhibits
8 11.0 - 11.19 admitted.)

9 MR. MacBRIDE: Thank you, Judge.

10 (Witness excused)

11 JUDGE VON QUALEN: I believe that
12 leaves Mr. Zuraski as the only remaining witness to
13 be cross-examined.

14 Please raise your right hand. Do you
15 swear to tell the truth, the whole truth and
16 nothing but the truth.

17 THE WITNESS: Yes, I do.

18 RICHARD J. ZURASKI,
19 of lawful age, produced, sworn, and examined on
20 behalf of the Staff of the Illinois Commerce
21 Commission, testifies and says:

22 MS. ERICSON: Your Honor, may I
23 proceed?

24 JUDGE VON QUALEN: Please. You may

1 proceed.

2 MS. ERICSON: Thank you. For the
3 record, this is Christine Ericson, counsel for
4 Commission staff.

5 DIRECT EXAMINATION

6 QUESTIONS BY MS. ERICSON:

7 Q. Good afternoon, Mr. Zuraski.

8 A. Hello.

9 Q. Please state your name for the record
10 and spell your last name.

11 A. Richard middle initial J. Zuraski,
12 Z-u-r-a-s-k-i.

13 Q. Who is your employer and what is your
14 business address?

15 A. The Illinois Commerce Commission, 527
16 East Capitol Avenue, Springfield, Illinois 62701.

17 Q. What is your position at the Illinois
18 Commerce Commission?

19 A. Economist.

20 Q. And did you prepare written exhibits
21 for submittal in this proceeding?

22 A. Yes.

23 Q. Do you have before you a document which
24 has been marked for identification as Staff Exhibit

1 3.0 which consists of a cover page, table of
2 contents, and eleven pages of narrative testimony,
3 and is titled Direct Testimony of Richard J.
4 Zuraski, Economist, Policy Division, Illinois
5 Commerce Commission, filed on e-Docket July 14th,
6 2015?

7 A. Yes, I do.

8 Q. Did you prepare that document for
9 presentation in this matter?

10 A. Yes, I did.

11 Q. And do you have before you a document
12 which has been marked for identification as Staff
13 Exhibit 5.0, which consists of a cover page and six
14 pages of narrative rebuttal testimony, and is
15 titled Rebuttal Testimony of Richard J. Zuraski,
16 Economist, Policy Division, Illinois Commerce
17 Commission, filed on e-Docket on July 24th, 2015?

18 A. Yes.

19 Q. Did you prepare that document for
20 presentation in this matter?

21 A. Yes.

22 Q. Do you have any corrections to make to
23 your exhibits?

24 A. No.

1 Q. Is the information contained in your
2 exhibits true and correct to the best of your
3 knowledge?

4 A. Yes.

5 Q. If I were to ask the same questions as
6 set forth in these exhibits, would your answers be
7 the same today?

8 A. Yes.

9 MS. ERICSON: Your Honor, I move for
10 admission into evidence Staff Exhibits 3.0 and 5.0.

11 JUDGE VON QUALEN: I'll defer ruling on
12 admissibility until after cross.

13 MS. ERICSON: Mr. Zuraski is now
14 available for cross-examination.

15 MR. SHAY: Yes, I'm going first again,
16 Your Honor, if I may.

17 JUDGE VON QUALEN: All right.

18 CROSS-EXAMINATION

19 QUESTIONS BY MR. SHAY:

20 Q. Mr. Zuraski, good afternoon. Bill Shay
21 for the Landowners Alliance. I only have a
22 fraction of the time that I had set aside for cross
23 that I'll need.

24 In your direct testimony you addressed,

1 among other things, the project's -- Grain Belt
2 project's impact on the Illinois economy; is that
3 correct?

4 A. Yes.

5 Q. In your opinion is the impact on the
6 Illinois economy of some relevance in determining
7 whether the Commission should approve the project?

8 A. My position on this has actually
9 changed a little bit. At one point I thought it
10 was not particularly relevant because I didn't see
11 it listed anywhere in the governing statutes. But
12 on the other hand, someone presented me with the
13 question, well, if somebody could show that if
14 Grain Belt Express or whatever project were to be
15 put in place and it would cause 50 percent
16 unemployment in Illinois, would you still say that
17 it's irrelevant? And I guess my answer to that
18 would be I don't see how I could ignore it. But
19 legally whether it's relevant or not I don't know.

20 Q. Okay. But are you saying as an
21 economist you think it is relevant?

22 A. I think it is, yes.

23 Q. Okay. If Illinois wind projects, that
24 is new wind energy projects developed in this

1 state, are a possible alternative to achieve some
2 or all of the objectives of the Grain Belt project
3 with Kansas wind, would the impact of those
4 Illinois projects on the Illinois economy also be a
5 relevant factor to you in your view?

6 A. Yes. I mean in just the same manner
7 that I just described. It's not the first thing
8 that I look at, but it's -- I guess it's something
9 that perhaps shouldn't be ignored completely.

10 Q. Okay. Thank you. I'd like you to turn
11 to page 5 of your testimony, I believe your direct
12 testimony, Exhibit 3.0, and your answer to the
13 question near the bottom of the page, your answer
14 starting on line 105. Do you see that?

15 A. I do.

16 Q. And you say, if I may read the first
17 sentence, "The GBE Project may not be built or it
18 may be built but be underutilized, or GBE may fail
19 or falter for a variety of reasons." Is that what
20 you stated?

21 A. I did. I apologize for not using GBX.

22 Q. Apology accepted.

23 Could you explain your statement that
24 it's possible that Grain Belt could fail or falter

1 for a number of reasons?

2 A. Yes. Well, in terms of fail or falter,
3 I think the most likely scenario would be that it's
4 not going to get through all of the hoops that it
5 needs to jump through in terms of regulatory
6 approvals or that at some point in time it is going
7 to -- some sort of new facts are going to come to
8 light that are not foreseen right now that make the
9 success of the project more suspect so they decided
10 to abandon it altogether. So I think that's pretty
11 much -- I'm not sure that's specific enough for
12 you, but that's how I'd describe what I was talking
13 about.

14 Q. Okay. And could that abandonment
15 altogether occur after the project is built and put
16 into operation?

17 A. Well, I don't -- no, not really. I
18 don't consider that to be a very significant -- or,
19 that there's a significant likelihood of that being
20 a problem. Most of the costs of this, aside for
21 like two percent, are in constructing it. So once
22 the asset's there, as long as there is still wind
23 in Kansas, then I see no reason why this project
24 wouldn't be utilized. Now, the investors who start

1 it off may take a bath. They may reorganize. They
2 may have to sell out to somebody else or whatever
3 happens. But it will still be a valuable asset
4 that exists with practically no operating costs, so
5 it will continue to be utilized.

6 Q. Okay. Is it possible that new
7 generation technologies, some that we know about
8 now, some that we don't, could cause market prices
9 for electric power to decline drastically and
10 thereby cause the scenario that you just described?

11 A. Yes, it's possible. I don't consider
12 it particularly likely, though.

13 Q. Well, would one such scenario, for
14 example, be that solar power continues to improve
15 and costs continue to come down and such that
16 distributed solar perhaps combined with Elon Musk's
17 battery storage systems assumes a much greater role
18 in supplying the country's electricity needs?

19 A. They would have to come down a
20 considerable extent to come anywhere close to the
21 cost of wind power.

22 Q. One of the requirements, is it not, for
23 Grain Belt to be granted a certificate for this
24 project under 8-406.1 is that it meet the

1 least-cost requirement? Is that true?

2 A. Yes, there is a least-cost -- the words
3 "least-cost" appear in the statute.

4 Q. Okay. I'd like to know what factors
5 you believe should go into that requirement for a
6 project like this.

7 A. Well, for a project like this, I think
8 that a lot of the evidence that was presented by
9 the company makes sense. In other words, if the
10 goal is to transport power over extremely long
11 distances, it is my understanding it's pretty much
12 been confirmed by staff engineers that a direct --
13 high voltage direct current technology is the way
14 to go. So I mean, that's the type of -- that's the
15 type of thing that I would look at in terms of
16 looking at alternatives is, is it the right
17 technology to utilize for the purposes for which
18 it's intended?

19 Whether it is entirely relevant to the
20 least-cost standard in this part of the statute or
21 not, I am also aware of the work that the company
22 did and some that I did looking at not just the
23 alternative types of transmission lines but the
24 sort of whole bundle of technology from the -- from

1 generation -- in addition to generation to utilize
2 this technology to more localized generation that
3 doesn't require long distance transmission at all.
4 Looking at that as well is I think a reasonable
5 thing to do to determine whether this is likely to
6 be beneficial or not.

7 I guess I would go a little short from
8 telling you that it's necessary for part of the
9 least-cost requirement of the statute or not.
10 That's -- that's -- I'll let the lawyers figure
11 that out.

12 Q. Okay. You would agree, wouldn't you,
13 that the least-cost requirement in the statute
14 applies here even though Grain Belt is following a
15 so-called merchant model for this project rather
16 than a rate recovery model?

17 A. Do you want me to answer as an
18 economist or as a person who is vaguely familiar
19 with the statute?

20 Q. I was hoping the latter.

21 A. Okay. Then, yeah, I think it's
22 definitely relevant.

23 Q. Okay. Let me ask you this, again
24 related to the least-cost requirement, if all that

1 Grain Belt had to do -- or, if all that Grain Belt
2 did was show that for the point -- for the location
3 it chose, that is western Kansas, for the start of
4 this project to the location it chose for the
5 termination point, the Sullivan substation, to meet
6 the AEP system in PJM that all they showed was that
7 this HVDC technology was better than AC and the
8 right one to use, least costly and all that, and
9 that they chose a reasonable route for the project,
10 is that enough in your view under statute to
11 satisfy the least-cost requirement or should there
12 be anything more, such alternatives that you
13 mentioned?

14 A. I think looking at the alternatives
15 that I mentioned is helpful to the extent to which
16 -- see, I have to assume that the reason the words
17 in the statute are there is because they want the
18 Commerce Commission to look at this, and they don't
19 want it to be entirely a matter of, well, it's the
20 competitive market and this is a merchant
21 transmission firm, so we'll let them worry about
22 themselves. So to some extent at least there's got
23 to be, in my mind anyway, some desire on the part
24 of those who wrote the statute for a look at

1 whether this whole thing, this whole undertaking
2 makes any sense or not. And when I say does it
3 make any sense or not, is it likely to be of
4 benefit to the public at large.

5 And if it's likely to be of benefit to
6 the public at large, in my mind as an economist, I
7 say, okay, well, what is this thing going to cost?
8 And, you know, what other -- what benefits are
9 there to doing this?

10 And that's where I think it makes sense
11 to look at the other -- you know, at least some
12 other reasonable alternatives that might be out
13 there to see if this thing can make sense, or if
14 it's just a complete, ridiculous waste of time, you
15 know, it's much cheaper to do it some way else, in
16 which case we have to start questioning whether
17 this whole thing is going to be able to get off the
18 ground or not.

19 Q. Okay. Thank you. Do you believe that
20 an effectively competitive electricity market
21 already exists in the state?

22 A. With emphasis on the word
23 "effectively". Because there are many aspects of
24 the electricity market that don't look very

1 competitive in some ways and some that look very
2 competitive. And in places where they don't look
3 competitive there are institutions in place that
4 make them look effectively competitive. There's
5 market mitigation measures that take place at the
6 RTO level. There's market monitors that exist to
7 put caps on prices if necessary or to mitigate
8 market power. So the answer is a qualified yes and
9 no.

10 Q. How about this, could I get you to
11 agree that with the caveats that you described that
12 it is true -- more true than not that indeed an
13 effectively competitive electricity market exists
14 in this state?

15 A. Yes.

16 Q. Okay. All right. You mentioned I
17 believe in your rebuttal testimony, Exhibit 5.0,
18 your model. Do you recall that?

19 A. Yes.

20 Q. And you got a question over on line 45
21 "How does your model differ from Mr. Berry's
22 model?"

23 A. Yes.

24 Q. To what model is that referring?

1 A. Okay. How do I identify for you? I
2 know that there was a model that Mr. Berry provided
3 to the Commerce Commission in response to a data
4 request and there's a model that -- I guess I would
5 call it the financial model of looking at the costs
6 of not only this project but of Kansas -- wind
7 generation technologies implemented in Kansas and
8 those implemented in Illinois and a combined cycle
9 facility. And in that analysis he came up with
10 various measures, one being a levelized cost of
11 electricity type measure and another one that looks
12 very like a revenue requirement -- a present value
13 revenue requirements approach with some
14 modifications. So that's pretty much what I'm
15 talking about. I'm sure he references it in his
16 testimony. I don't know if the actual model is in
17 any other way documented in the record, but I know
18 that we got a working version of it through a data
19 request.

20 Q. Okay. What about the reference to your
21 model, meaning you, when it says "How does your
22 model differ from Mr. Berry's?" What are they
23 referring to when they ask you what your model is?

24 A. Okay. So I actually started with Mr.

1 Berry's model. And when I say model in this
2 instance, I'm talking about an Excel workbook. And
3 I made various modifications to that. Among other
4 things, I treated debt and equity as two separate
5 things as opposed to a combined thing. I took into
6 account some property taxes that it looked like
7 they were to be incurred by the Kansas wind farms.
8 And I did other things that are not -- are
9 mechanical. They're not -- it's not fundamental
10 changes I would say but other mechanical things
11 that I needed to do in order for it to run
12 properly.

13 Q. Okay. And this was a model that you
14 built off of Mr. Berry's model then and submitted
15 the results of in connection with your rebuttal
16 testimony?

17 A. Yes.

18 Q. Okay. You didn't prepare a model, did
19 you, for purposes of your direct testimony?

20 A. I didn't prepare one for purposes of
21 the direct testimony except to the extent to which
22 there were other modifications -- there were some
23 other modifications that I did to Mr. Berry's model
24 that I wanted to look at some sort of additional

1 scenarios. In his model there's -- I don't know --
2 10,000 -- I can't remember how many -- 13,000
3 scenarios and I wanted to look at some more. That
4 wasn't enough for me. So that's -- that's kind of
5 what I did to -- in the first instance prior to us
6 submitting direct testimony.

7 Q. Okay. So in your direct testimony
8 you --

9 A. But I really don't think -- I don't
10 think I make reference to it or rely upon it for
11 the testimony.

12 Q. Okay. So when you -- you submitted the
13 results of your model as part of your rebuttal
14 testimony on July 24th?

15 A. Yes.

16 Q. And wasn't that the date that both
17 Staff and Intervenor's witnesses had to submit
18 their rebuttal testimony, if you remember?

19 A. Yeah. I mean, I was working up to the
20 last minute on completing the modeling process.

21 Q. Okay. And are you aware that the
22 schedule didn't allow anyone other than Grain Belt
23 to submit any further testimony to comment on your
24 model that you presented in your rebuttal

1 testimony?

2 A. Yes.

3 Q. And that would include Dr. Proctor who
4 wouldn't have had a chance to do so?

5 A. Yes.

6 MR. SHAY: Okay. I have no further
7 questions. Thank you very much.

8 CROSS-EXAMINATION

9 QUESTIONS BY MR. NEILAN:

10 Q. Good afternoon, Mr. Zuraski. My name
11 is Paul Neilan and I represent Mary Ellen Zotos,
12 one of the Intervenors in the action. She owns
13 land that may be traversed by the proposed
14 transmission line if the Commission orders the line
15 to be approved and constructed.

16 I'd like to ask you a question, if you
17 would please refer to lines 112.

18 A. I'm sorry. I didn't hear that.

19 Q. Sure. I'm sorry. Lines 112 to 115 in
20 your direct testimony. That's Exhibit 3.0.

21 A. Did you say 112?

22 Q. Yes. It's the block text.

23 A. Yes.

24 Q. And this is something that you paid a

1 good deal of attention to in preparing your
2 testimony. It's an undertaking or commitment by
3 GBX and it says that -- let's see -- doesn't have a
4 process to recover its costs from ratepayers, and
5 therefore must sell it's capacity through
6 negotiated contracts.

7 And also further down on that page
8 actually, in line 129, there's some quoted text
9 which begins "Prior to recovering any Project costs
10 from Illinois retail ratepayers through PJM or MISO
11 regional cost allocation, Grain Belt Express will
12 obtain the permission of the Illinois Commerce
13 Commission in a new proceeding initiated by Grain
14 Belt Express," including any costs of system
15 upgrades and so on. But the idea is that they're
16 coming back to the Illinois Commerce Commission for
17 permission to go through an RTO cost allocation.
18 And you read that.

19 Would you explain in your own words how
20 you interpret this operating? I mean how you saw
21 it operating if, for example, they did want to go
22 back for cost allocation?

23 A. I'm not exactly sure I know what you
24 mean by operating.

1 Q. Okay. Let me break it --

2 A. You mean how --

3 Q. Let me break it down.

4 A. -- how would they initiate a
5 proceeding?

6 Q. No, no. Let me break it down a little
7 bit more concretely.

8 Would it be your understanding based on
9 this language that GBX should come back to the
10 Commission first and get permission from the
11 Illinois Commerce Commission before proceeding with
12 any type of steps at PJM or MISO on cost
13 allocation?

14 MS. ERICSON: Your Honor, I'm going to
15 object here. In this testimony on page 6 Mr.
16 Zuraski is explaining what GBE -- or, GBX plans to
17 do. He's not making an opinion on what he thinks
18 they should do.

19 MR. NEILAN: I think it's fair to ask
20 him how he understands it. He's relying on it in
21 his testimony and I think it's important for --

22 MS. ERICSON: Fair enough. The way you
23 characterized it was a little different, so if you
24 want to rephrase.

1 MR. NEILAN: Sure.

2 Q. What I'm asking is, when you read this,
3 did you read it as contemplating a scenario in
4 which GBX would come back first to the Illinois
5 Commerce Commission in this new proceeding and ask
6 the Commerce Commission's approval before they head
7 to PJM or MISO for cost allocation?

8 A. No, that's not how I read it.

9 Q. Okay. So they could go to the PJM or
10 MISO transmission organization first, get a result
11 from them. All right. And let's say they did
12 approve cost allocation. And as you understood it,
13 they could then come back -- they would then come
14 back to the Illinois Commerce Commission and seek
15 approval?

16 A. No, I wouldn't put it that way either.

17 Q. Okay. Can you explain how you -- I'm
18 not sure I follow. Could you explain how you
19 understood it?

20 A. Yes. I actually liked the first way
21 that you asked it because there it was would they
22 -- would they come to the Commission basically
23 prior to actually recovering these costs. And I
24 think the answer there, yeah. Before they start

1 recovering any costs through this methodology,
2 through this approach utilizing PJM or MISO, before
3 they actually start recovering those costs, they
4 would have to come to the Commission.

5 But that doesn't mean that I
6 personally, if I somehow had control over this,
7 would say, well, I don't want you even talking to
8 PJM or MISO about this, I don't want you coming to
9 any kind of preliminary understandings or running
10 the numbers to see what it is or investigating
11 possible upgrades here, there, or the other place,
12 until you come talk to us first. I didn't really
13 read it as that restrictive that they can't go out
14 and, you know, consider various projects or
15 whatever involving PJM or MISO before they come get
16 permission from the Commerce Commission. It's just
17 the actual recovery of costs is where I saw the
18 necessary condition is you get approval from the
19 Commission.

20 Q. Okay. I understand that.

21 A. And that that's the commitment.

22 Q. I'm sorry?

23 A. And that's the commitment they're
24 making.

1 Q. Okay. Let's assume that they did that,
2 that they went to PJM for cost allocation. They
3 succeeded in getting it and they have whatever
4 opinion or order or whatever document PJM may issue
5 for approval in this. They then come to the
6 Commission and you're asked to review it. Would
7 the fact that they already had approval from PJM
8 kind of add weight to your determination as to
9 whether the Commerce Commission should approve or
10 disapprove this request to recover these costs?

11 A. It might very well. I mean, I think it
12 would depend on the circumstances and we'd
13 certainly want to know why PJM was, quote,
14 approving this, you know, what the particulars
15 were, because there's a good chance that there's
16 some good reason for why they think that whatever
17 this -- you know, whatever these costs are ought to
18 be expended and that that reason may in fact
19 benefit people in Illinois and that it's not
20 necessarily crazy to allocate a portion of the cost
21 therefore to, you know, recovery from ratepayers
22 served by Commonwealth Edison, for example. So I
23 think it could in fact have some weight, but it's
24 -- I don't think -- just the mere approval itself

1 wouldn't, but my guess is there's going to be
2 something behind that approval that involves some
3 reasons for why PJM is -- wants to do it.

4 Q. And let's assume that scenario happened
5 and they came back to the Illinois Commerce
6 Commission for this permission and you disagreed
7 with the PJM determination or its rationale, you
8 think for one reason or another that kind of cost
9 recovery, cost allocation would not be proper as
10 say not fair to the Illinois ratepayers, and you
11 recommend that the Illinois Commerce Commission not
12 consent to this. What is your expectation of what
13 Grain Belt Express should do in that circumstance?

14 MS. ERICSON: I'm going to object here.
15 This is -- Your Honor, this is quite a hypothetical
16 with many assumptions built in, and it's not
17 accurate to say that it would be Mr. Zuraski making
18 the assessment. So I object to this.

19 MR. NEILAN: May I respond?

20 JUDGE VON QUALEN: Yes.

21 MR. NEILAN: Your Honor, Mr. Zuraski is
22 an expert witness for the Illinois Commerce
23 Commission. He is relying on this commitment from
24 GBX. In cross-examination there's a wide latitude

1 for questions, including hypotheticals, to expert
2 witnesses who give opinion testimony.

3 I'm basically describing a hypothetical
4 that's built precisely along the lines of the
5 commitment language GBX is offering and which Mr.
6 Zuraski considered and asking him what his
7 expectation would be if -- you know, for what would
8 happen next. I don't think that's an unfair
9 question to ask him or something that doesn't
10 follow from his testimony.

11 JUDGE VON QAULEN: The objection is
12 overruled.

13 Mr. Zuraski, you may answer the
14 question.

15 A. Well, there's two different questions
16 now I'm afraid. The first one prior to the
17 objection was what should they do and the second
18 one as part of your explanation was what would I
19 expect they would do. Which one should I answer?

20 Q. Well, let's see if I can rephrase it.
21 Let's put it this way: Let's assume that based on
22 this commitment and this language that we're
23 looking at on page 6 that the Illinois Commerce
24 Commission did not give its consent for GBX to go

1 for cost allocation at PJM. Then if you were to
2 learn that GBX went for cost allocation anyway and
3 got it, would your reaction be negative or
4 indifferent or positive? How would you -- would
5 you believe that they had not lived up to their
6 commitment?

7 A. I'm pretty sure I get what you're
8 saying, but let me be 100 percent sure.

9 Q. Uh-huh.

10 A. They've defied a Commission Order and
11 done something that the Commission told them they
12 shouldn't do, and you're asking me what would my
13 reaction be?

14 Q. Your personal reaction based on the
15 fact that --

16 A. My reaction would be -- let's say I'm
17 the first person to hear about this. I would call
18 up our Office of General Counsel and I would say
19 there's somebody that's -- you know, there's an
20 entity defying a Commission order. I recommend
21 that you look into whatever steps we can take as an
22 entity to hold them accountable for that, whatever
23 penalties can be applied, you know, should be
24 looked into. I don't know exactly where that would

1 go or how would that proceed.

2 Q. That's fine.

3 A. But I guess if you're just asking would

4 I have sort of a negative reaction to it, my guess

5 is that's --

6 Q. Well --

7 A. Does that explain?

8 Q. Yes. I mean, the question is that

9 based on this you would have a certain expectation

10 that GBX would honor this commitment and that --

11 A. I'd call it more of a hope than an

12 expectation.

13 Q. Okay. A hope or --

14 A. But --

15 Q. That's fine.

16 A. I guess I would expect it more than,

17 you know -- yeah, an expectation.

18 Q. You might feel disappointed if they

19 didn't? You might be disappointed, for whatever --

20 for whatever that's worth. Okay.

21 A. Probably not disappointed.

22 Q. Now, you discuss the fact that the

23 project promotes public convenience and necessity

24 and the development of an effectively competitive

1 electricity market and that's discussed at some
2 length. At lines 200 to 202 of your direct
3 testimony you conclude that GBX is the least-cost
4 means of developing a competitive electricity
5 market.

6 And from your earlier testimony, you
7 had some questions from Mr. Shay regarding aspects
8 of that market. And you're familiar with PJM and
9 the market monitoring unit that PJM runs, I assume;
10 is that correct?

11 A. Yes.

12 Q. And you're familiar, I also assume,
13 with their annual reports? The market monitoring
14 unit puts out a state of the markets report which I
15 assume you're familiar with at least in general?

16 A. I am. I can't say I read every one
17 cover to cover.

18 Q. Sure.

19 A. But, yes, I know what you're talking
20 about.

21 Q. And if you had a question, you'd
22 certainly know where to go within that report?

23 A. Yes.

24 Q. That's fine.

1 JUDGE VON QUALEN: Mr. Neilan.

2 MR. NEILAN: Yes.

3 JUDGE VON QUALEN: Just be mindful of
4 the clock. We cannot go past a little bit before
5 5.

6 MR. NEILAN: I understand. Okay. I'll
7 finish up quickly.

8 Q. It was the least-cost alternative and
9 you said if the goal is to bring the power from
10 west Kansas to PJM. And that's certainly one goal.

11 If I were to recast that goal and say
12 that the principal purpose for these projects, the
13 wind projects in west Kansas and the HVDC line,
14 were to help Illinois meet it's Renewable Portfolio
15 Standard, would you still be of the view that this
16 is the least-cost means of achieving that
17 objective?

18 A. I -- let me -- I have to first say I
19 just -- I hate this least-cost means of stuff
20 because that's just not the way I look at things.

21 Q. Understood.

22 A. But it's -- it doesn't make sense to me
23 a lot of times to think of this least -- as if we
24 could know exactly what the least-cost is. What I

1 think, though, is that this project and the wind
2 projects that are expected to develop around it
3 will in fact help contribute to meeting several
4 worthy objectives that are beneficial to the people
5 of Illinois, including lowering the cost of or at
6 least increasing the extent to which the Renewable
7 Portfolio Standard is met in Illinois. Even though
8 -- I know what you're going to say. Even though at
9 least for the alternative retail electric suppliers
10 they may not be able to purchase this electricity
11 directly from Kansas wind farms in order to satisfy
12 the Renewable Portfolio Standard in Illinois
13 because of the way the law's written. But
14 nevertheless, this project, by injecting a lot of
15 additional wind energy into the MISO and the PJM
16 RTOs is going to have an effect on renewable energy
17 credit prices in Illinois.

18 I mean, all these markets are
19 connected. You can't -- you don't have to have a
20 one-to-one, we're going from here -- we're going to
21 from point A to point B for it to be beneficial to
22 the people at point B. You can go somewhere else
23 and still have a beneficial effect in terms of
24 lowering prices, increasing competition, not only

1 for renewable energy credits but I think also for
2 energy.

3 MR. NEILAN: Okay. Thank you very
4 much. I have no further questions, Your Honor.

5 CROSS-EXAMINATION

6 QUESTIONS BY MR. DAVIS:

7 Q. My name's Chuck Davis and I'm counsel
8 to the Illinois Farm Bureau. Just a couple
9 questions here.

10 Isn't it true that GBX has only
11 presented evidence in support of the benefits of
12 the project and not the project's expected costs in
13 the analysis that you've renewed?

14 A. No.

15 MR. DAVIS: For the sake of efficiency,
16 I'll defer my time to Mr. McNamara so I can
17 continue to review my notes, and I'll come back.

18 MR. McNAMARA: Thank you.

19 CROSS-EXAMINATION

20 QUESTIONS BY MR. McNAMARA:

21 Q. Mr. Zuraski, my name's Ed McNamara. I
22 represent Intervenor Concerned Citizens and
23 Property Owners.

24 MS. ERICSON: Talk into the microphone,

1 please.

2 MR. McNAMARA: Excuse me.

3 Q. Mr. Zuraski, my name is Ed McNamara. I
4 represent Concerned Citizens and Property Owners,
5 an Intervenor in this case.

6 You have your testimony in front of
7 you. I'd refer your attention to page 3, lines 55
8 through 61. First off, line 56, I refer you to the
9 phrase "based on my evaluation." Tell me about
10 your evaluation, sir. Describe what you did.

11 A. I don't see what you're talking about.
12 Oh, I see, at line 56.

13 Q. Yes, sir.

14 A. Excuse me. Okay. "Based on my
15 evaluation, I expect that the GBE Project will
16 promote the public convenience and necessity and
17 will promote the development of an effectively
18 competitive electricity market that operates
19 efficiently, is equitable to all customers, and is
20 the least-cost means of satisfying those
21 objectives."

22 Q. Let's take it a step at a time.
23 Describe your evaluation for me, would you please?

24 A. Okay. So I -- my evaluation relied a

1 lot on the case that was presented by the company
2 in terms of the costs of the project and the nature
3 of the wind resources that the project is aimed
4 towards connecting to the grid and the nature of
5 the wind resource that could be utilized without
6 this project being in place and various other costs
7 and benefits associated with -- with all these
8 resources. And from what I was seeing in that
9 review was that it was likely the project would
10 provide an additional source of competitive supply
11 into both the renewable energy credit market and
12 energy market, possibly capacity market. Although,
13 that's not really part of what is being presented
14 by the company. And that furthermore, in order to
15 tap into that wind resource, the type of technology
16 that was being utilized here makes sense to me.
17 Although, that is something that was primarily,
18 almost entirely, being reviewed by other Staff
19 witnesses. And I guess that's it.

20 Q. Thank you. Have you testified in prior
21 406.1 cases?

22 A. I have testified in other -- in two
23 other cases involving certificates for transmission
24 companies. I can't remember precisely what the

1 sections of the statutes were that were involved
2 there. They were probably what you just said.

3 Q. And prior to presenting your direct
4 testimony in this case you had the availability to
5 evaluate the company's evidence; is that correct?

6 A. I did.

7 Q. You did not at that time have the
8 availability of the evidence presented by
9 Intervenor?

10 A. Are you saying in those other cases?

11 Q. No. I'm sorry. In this case.

12 A. In this case.

13 Q. In your evaluation, when you presented
14 your direct, all of the information you had was
15 information presented by the company, the
16 Applicant?

17 A. Yes.

18 MS. ERICSON: That question is
19 argumentative. I think that evaluation was asked
20 and answered.

21 MR. McNAMARA: Okay. Now I have it.

22 Q. And then you later presented evidence
23 in rebuttal on the basis of what?

24 A. I think the only witness that I

1 presented rebuttal concerning was Dr. Proctor, and
2 it was based on the testimony he put forward, and
3 on my extremely brief review -- because there
4 wasn't a lot of time to get discovery -- of work
5 papers that he prepared. And so based on some
6 things that he brought up there, that's kind of
7 what led me to construct my own model, basically
8 confirming what my previous findings were anyway.

9 Q. Thank you. With regard to the company
10 witnesses and the direct evidence that they filed
11 with their application, which witnesses did you
12 rely upon, if you can recall?

13 A. I would say Mr. Berry, to a more
14 limited extent Mr. Galli -- or, Dr. Galli rather,
15 to a limited extent Mr. Cleveland, Dr. McDermott,
16 and to a limited extent Dr. Loomis.

17 JUDGE VON QUALEN: Counsel, we're
18 really out of time, Mr. Davis, if you have more
19 questions, unless Counsel wants to continue this
20 and have additional evidentiary hearing, which
21 would have to be when everybody's available and
22 very, very quickly.

23 MR. McNAMARA: And that's the objection
24 we've raised and I'd just like to make on the

1 record that I have probably another five to ten
2 minutes of real short questions and that's -- I'd
3 like to make on the record at this time that's why
4 Counsel has objected to 406.1. And I'd certainly
5 make myself available at any reasonable time.
6 Thank you.

7 MS. ERICSON: Your Honor, this is
8 counsel for Commission staff, and I would just
9 point out that Mr. Zuraski has made himself
10 available all four days, and I note Intervenors'
11 counsel have gone significantly over their time
12 limits. So I would move his testimony into the
13 record at this time.

14 MR. DAVIS: Judge, I join in
15 Mr. McNamara's comments. I have probably four
16 questions.

17 MR. MacBRIDE: Well, can we discuss
18 what --

19 JUDGE VON QUALEN: Let's go off the
20 record.

21 (Discussion off the record)

22 JUDGE VON QUALEN: Back on the record.

23 After a brief off-the-record
24 conversation, it has been determined that the

1 parties are available to come back to finish the
2 hearing, and so we will continue the hearing until
3 tomorrow at 9:30 a.m.

4 (Discussion off the record)

5 JUDGE VON QUALEN: Back on the record.
6 We continue until 9 a.m. tomorrow morning.

7 (The hearing was continued until
8 August 21, 2015, at 9 a.m.)

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1 CERTIFICATE OF REPORTER
2 STATE OF ILLINOIS)
3) ss
4 COUNTY OF SANGAMON)
5 I, DOROTHY J. HART, a Registered
6 Professional Reporter and Certified Shorthand
7 Reporter within and for the State of Illinois, do
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9 appears in the foregoing hearing were duly sworn by
10 Judge Von Qualen; that the testimony of said
11 witnesses was taken by me to the best of my ability
12 and thereafter reduced to typewriting under my
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